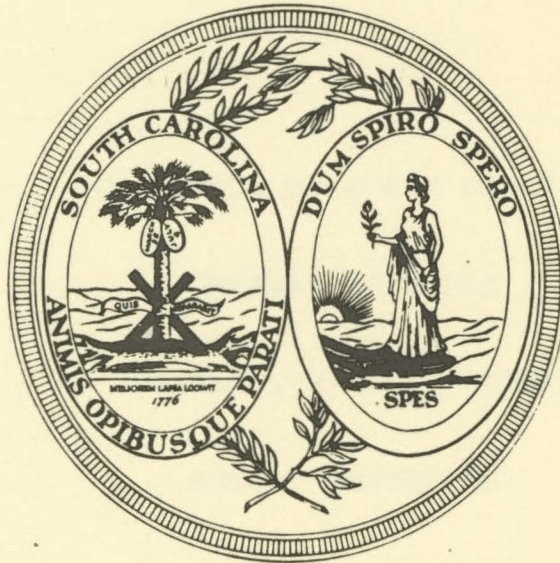


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South Carolina General Assembly



Legislative Audit Council

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The State of South Carolina
General Assembly
Legislative Audit Council
Sunset Review of:
Board of Barber Examiners
Board of Cosmetology
Board of Examiners for
Nursing Home Administrators
Department of Insurance
Board of Accountancy
September 6, 1985

THE STATE OF SOUTH CAROLINA

GENERAL ASSEMBLY

LEGISLATIVE AUDIT COUNCIL

SUNSET REVIEW OF:

BOARD OF BARBER EXAMINERS

BOARD OF COSMETOLOGY

BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS

DEPARTMENT OF INSURANCE

BOARD OF ACCOUNTANCY

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REPORT INTRODUCTION

In July 1978, the General Assembly passed Act 608, the Sunset Act. This Act abolishes specific boards, programs and commissions on predetermined dates unless the agency demonstrates a public need to justify its continued existence. In passing the Law, the Legislature's greatest concern was whether the regulation provided by these agencies was needed to protect the public interest and, if so, how well the agencies were performing this function. This report contains the reviews of 5 boards scheduled to terminate on June 30, 1986:

Board of Barber Examiners
Board of Cosmetology
Board of Examiners for Nursing Home
Administrators
Department of Insurance
Board of Accountancy

The Sunset Law made the Legislative Audit Council responsible for evaluating the performance of these agencies scheduled for termination. A systematic review is provided by the Act so that the Legislature might be in a, "better position to evaluate the need for their continuation, reorganization or termination." The Act requires that the Audit Council, as a minimum, address the following eight issues:

- (1) The amount of the increase or reduction of costs of goods and services caused by the administering of the programs or functions of the agency under review;
- (2) Economic, fiscal and other impacts that would occur in the absence of the administering of the programs or functions of the agency under review;

- (3) The overall cost, including manpower, of the agency under review;
- (4) The efficiency of the administration of the programs or functions of the agency under review;
- (5) The extent to which the agency under review has encouraged the participation of the public and, if applicable, the industry it regulates;
- (6) The extent to which the agency duplicates the services, functions and programs administered by any other State, federal or other agency or entity;
- (7) The efficiency with which formal public complaints filed with the agency concerning persons or industries subject to regulation and administration of the agency under review have been processed; and
- (8) The extent to which the agency under review has complied with all applicable State, federal and local statutes.

This criteria provided guidelines and measures by which an agency's performance can be judged. In its review, the Audit Council studied the fiscal and management practices of each agency, program or board. All applicable policies, procedures and State regulations were reviewed. Files, memos, minutes of meetings and records were examined and complaints and examination data analyzed. In addition, the Audit Council surveyed Board members and interested industry associations and interviewed the Boards' staffs.

Review of the regulatory duties and functions of the Board of Accountancy and Department of Insurance indicate that these two agencies fulfill a public need through the regulation of their industries. The Audit Council recommends that these agencies and their programs be continued. The Council has also determined that the

licensure program for Nursing Home Administration should be continued. However, the Council recommends this program, to more adequately meet its mission, be reorganized under the Department of Health and Environmental Control.

The Legislative Audit Council has determined that the Board of Barber Examiners and the Board of Cosmetology do not meet the criteria set out in the Sunset Act to justify continued existence. Furthermore, if the General Assembly decides to continue State regulation of the hairstyling industry, the Audit Council recommends that one Board of Hairstyling be created.

This report is the first step in the Sunset process. Each agency was invited to respond in writing to its audit report and their comments follow the report. In addition, each agency is given the opportunity to testify before the State Reorganization Commission. Following this process, the General Assembly will decide whether to reestablish or terminate these programs.

BOARD OF BARBER EXAMINERS

BOARD OF COSMETOLOGY

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DEREGULATION

The State regulation of the hairstyling industry is unnecessary for the protection of the public's health and welfare. In addition, State regulation unnecessarily restricts and taxes the industry. The Audit Council reviewed the Board of Barber Examiner's and Board of Cosmetology's licensure functions, regulatory enforcement functions, and policies and procedures. Based on evidence found in this review, both Boards and their related licensing provisions can be terminated without significantly harming the public. The Council found the regulation of the hairstyling industry is not justified based on sanitation concerns or potential harm to the consumer from use of chemical solutions and implements. Current regulatory measures are superficial and do little to protect the public health. Licensure of an occupation or industry should be justified only on the degree to which the unlicensed practice poses a serious risk to the consumer life, health and safety, or economic well being. Additionally, licensure is the most restrictive of the regulatory approaches and, therefore, should be a remedy of last resort.

Based on this criteria, the industry should be deregulated for five major reasons which are discussed below.

(1) The Council found no evidence of serious harm to consumers in South Carolina from use of chemicals or

implements by barbers or cosmetologists during the last 45 years. The Audit Council conducted a search and review of court cases dealing with the use of chemicals by hair stylists that reached the appellate level. The Council could find no cases concerning malpractice by hairstylists which were reviewed by an appeals court in South Carolina during the last 15 years. The Council could also find only 4 cases since 1970 in all of the states concerning malpractice by hairstylists which were reviewed by an appeals court. Of these 4 cases, the largest award to a consumer was \$3,000. The Council did find one case of a wrongful death due to the use of chemicals by a hairstylist. Although this was a South Carolina case, the death occurred in 1935 and was because the customer was a diabetic.

The Council also reviewed the complaints received by the Boards over the past four years. The Cosmetology Board has received few complaints of chemical damage. In all cases, damage involved only hair breakage and/or scalp irritations. The Board has held informal hearings on only ten cases regarding complaints of hair damage in the last four years.

Additionally, the question of whether real harm is involved in the hairstyling profession was addressed by a 1973 study commissioned by the President's Council on Health and Chemicals. The study found:

As our knowledge of toxicity of the materials we use has increased, those that present known hazards have been dropped (as happened with thallium

compounds in depilatories) or restricted in use so that the remaining hazards are minimal (as with lead salts or aniline dyes used in hair coloring). From what may be judged from human experience, the incidence of injury is small. There have been no reported recent deaths...

(2) Chemicals used by hairstylists are sold over the counter to the general public as well as licensed hairstylists. Being a licensed hairstylist grants no special privileges as to the types and toxicity of chemicals which can be used on a person's hair or face.

(3) The frequent and costly inspections conducted by both Boards do not protect the public's health or welfare. The Audit Council found, for numerous reasons detailed below, that sanitation inspections conducted by the Board of Barber Examiners and the Board of Cosmetology are unnecessary and do not protect the public's health and welfare.

The Board of Barber Examiners has not inspected all shops a minimum of once a year. It has closed no shops for sanitation violations in the last three years even though the Board admits that one shop has been in continuous violation of its sanitation code for "about eight years." In the present review of the Board, only three sanitation complaints were found. One was referred to the Board via the Department of Health and Environmental Control and concerned the operation of a taxidermy shop within a barbershop.

The Cosmetology Board has revoked no salon licenses for sanitation violations in the past five years and the Board's

inspectors have frequently declined to grade shops because they were considered too dirty, allowing operators to have shops graded at a later time. Furthermore, records show the Board did not take action in cases where salons have failed up to as many as 3 sanitation inspections over a period of 12 months. In addition, the Board has not inspected at least once a year private schools of cosmetology. During the last 5 years, 21 of the 26 private schools of cosmetology, which are presently in operation and have been since at least 1982, went uninspected for at least a 3-year period. This was allowed to occur even though students of these schools provide cosmetology services to the public for a fee. Yet, the present review of the Board of Cosmetology revealed only 16 sanitation complaints since 1979.

Other states have modified inspection practices. Since 1980, when hair salons were deregulated, Connecticut has conducted sanitation inspections of hairstyling salons on a complaints basis. The Connecticut Department of Health Services told the Audit Council that it has:

not found any significant health risks to have resulted from the deregulation of salons.

[Even though]: The professional community predicted that [deregulation] ... would ... [cause Connecticut to] ... have outbreaks of headlice and other public health hazards.

Additionally, the State of Virginia inspects its salons on a complaints basis only. No significant sanitation problems have been noted by the State's Department of Commerce.

(4) The Audit Council has found that consumers are able to judge the adequacy and competency of the service provided by hairstylists. The Audit Council conducted a survey of the licensed barber hairstylists and found that 90% of them believe that consumers can adequately judge the merits of their services.

(5) Finally, the regulation of the barber and cosmetology industry unnecessarily costs the industry in South Carolina \$500,000 a year.

While the regulation of the hairstyling industry is unnecessary, private schools which teach hairstyling need to be regulated like all proprietary schools for the protection of students from fraudulent practices by school owners. Presently, the private hairstyling schools in the State are regulated by the two hairstyling boards, instead of the State Department of Education, due to an exemption in §59-59-20 of the Proprietary School Act. Dissolving the Boards of Barber Examiners and Cosmetology would not end regulation of such schools. Instead, dissolving the Boards would simply transfer regulation of private schools of hairstyling to the State Department of Education. This would occur since the section in §59-59-20 exempting proprietary schools which are "regulated and licensed under an occupational licensing act of the State" from regulation by the Department of Education would no longer apply.

RECOMMENDATION

THE REGULATION OF THE PROFESSION OF HAIR
STYLING IS UNNECESSARY. THE GENERAL
ASSEMBLY SHOULD CONSIDER DISSOLVING THE
BOARD OF BARBER EXAMINERS AND THE BOARD
OF COSMETOLOGY, AND ELIMINATING THE
STATE'S REGULATION OF THE INDUSTRY.

COMBINATION

If the General Assembly decides to continue State regulation of hairstyling, then the Boards of Barber Examiners and Cosmetology should be dissolved and a new Board of Hairstyling should be created. Combining the Boards would improve regulation of the industry and result in substantial cost savings and increased administrative efficiency. The creation of one Board of Hairstyling would in no way harm the public's health and welfare.

The Audit Council could find no justification to maintain two separate State agencies with the same administrative functions to regulate one industry. Fifty years ago there were natural divisions between the two professions and the two boards based on sex and type of work performed. When the Boards were created, barbers were men who cut men's hair and gave them shaves. Cosmetologists were women with a clientele of women and, unlike barbers, performed chemical services on their clientele's hair as well as simply cutting it.

The Audit Council surveyed both barbers and cosmetologists and found that these historical differences have almost totally disappeared. The Council found the following: (1) over 40% of licensed barbers surveyed have a clientele made up of at least 30% women; (2) over 40% of the licensed cosmetologists surveyed indicated that 25% or more of their clientele are male; (3) over 40% of the licensed

barbers surveyed do 30% or more of their business in chemical waving, chemical relaxing, chemical straightening, and chemical bleaching; (4) 60% of the licensed barbers surveyed do less than half their business in tapered hair cuts; (5) shaving is no longer a major service of most barbers; and (6) during the 5-year period from July 1, 1979 through June 30, 1984, over 65% of all newly licensed barbers were women. Furthermore, the curriculums of barber and cosmetology schools have become similar. An owner of both barber and cosmetology schools told the Audit Council that the only difference in curriculums used in his barber and cosmetology schools was "the cosmetology students... [are]... taught finger waving, pin curls, and manicuring."

The historical differences between barbers and cosmetologists no longer exist. The continued operation of two State agencies regulating one industry has become cumbersome, unnecessary and results in duplication and waste of funds. Both the Board of Barber Examiners and the Board of Cosmetology perform the same administrative functions: (1) both issue and renew licenses for hairstylists, hair salons, and hairstyling schools; (2) both inspect hair salons and hairstyling schools; (3) both handle complaints about unlicensed and licensed hairstylists; and (4) both maintain detailed records of the State's hairstylists and hair salons. Nine states (Alaska, Colorado, Connecticut, Delaware, Oregon, Utah, Washington, West Virginia, and New Hampshire) have combined their barber and cosmetology

boards. The Audit Council was told by the States of Alaska, Connecticut, Colorado and Oregon that they realized monetary savings in operation costs due to reduced travel, per diem, rent and staff.

The Audit Council has estimated that by dissolving South Carolina's 2 hairstyling boards and creating 1 new Board with 5 members located at the present Board of Cosmetology office, the State could save \$55,617 annually (see Table 1). This would occur due to the following reductions in expenditures: (1) \$6,300 annually in per diem expenses; (2) approximately \$3,900 annually in Board member travel expenses; (3) \$4,200 in rent annually; (4) \$227 a year in household, laundry and janitorial expenses; (5) \$2,695 annually in telephone and telegraph expenses; (6) \$1,953 in utility bills; (7) \$1,000 a year savings from renting only 1 postage meter; and (8) \$1,342 a year savings from renting only 1 photocopier. Furthermore, the Audit Council estimates that there would be an additional savings of approximately \$34,000 annually from lower costs due to increased efficiencies from economies of scale.

TABLE 1

ESTIMATED SAVINGS FROM COMBINED BOARD

Per Diem	\$ 6,300
Travel	3,900
Rent	4,200
Household, Laundry, & Janitorial	227
Telephone & Telegraph	2,695
Utilities	1,953
Postage Meter	1,000
Photocopier	1,342
Economies of Scale	<u>34,000</u>
TOTAL	<u>\$55,617</u>

The creation of one new Board to regulate the industry would not only save funds, but would also result in a reduction of unnecessary constraints placed upon hair stylists and hair salons from having two regulatory bodies. Although the historical differences between the two practices no longer exist, licensed barbers cannot legally work in a cosmetology salon unless they also hold a cosmetology license. In order to obtain a cosmetology license, a licensed barber must first repeat the 1,500 hours of hairstyling training (s)he took in barber school in a cosmetology school and then have their competency as a hairstylist examined a second time by the Board of Cosmetology. Approximately 1,000 hours of the 1,500 school hours are practical work. Therefore, a professional barber who has practiced his/her trade for years is forced to cut hair free for a cosmetology school owner in order to obtain a cosmetology license.

While a licensed cosmetologist who wishes to legally work in a barbershop is not forced to go back to barber school, they are forced to go through a two-year process of

training and examinations in order to obtain a registered barber license. This process has 4 parts: (1) the cosmetologist must train for a year under a registered barber as an on-the-job training barber student; (2) the cosmetologist must pass the Board's apprentice barber exam; (3) the cosmetologist must work under a registered barber for a year as an apprentice; and (4) the cosmetologist must pass the Board's registered barber exam.

Furthermore, the Audit Council could find no justification for the Cosmetology Board's opposition to in-shop training for 3 reasons: (1) the barbering statutes allow 1 registered barber to train 1 and only 1 student at a time while both the cosmetology policy and barbering statutes require only 1 instructor for every 20 students; (2) shop training allows students to earn a living while becoming a hairstylist; and (3) the Audit Council in its review of the Board of Barber Examiners could find no evidence of public harm having occurred from some hairstylists being trained in shops.

The combination of the two Boards with one license, would not only eliminate the redundancy necessary for a person to obtain both licenses, but it would also eliminate the present illegality of barbers performing chemical services which they have performed for years with no harm to the public's health and welfare. The General Assembly has given barbers an exemption from this ruling until the State Reorganization Commission reviews the two Boards. It is the

opinion of the Attorney General as stated on December 11,
1984:

...that barbers or barbershops may not provide any chemical waving, chemical relaxing, chemical straightening, or chemical bleaching services to the public.

Additionally, the Attorney General notes in his opinion that:

...Section 40-13-280 of the 1976 South Carolina Code provides that any person who employs or supervises someone to practice cosmetology when that person is not a licensed cosmetologist may be guilty of a misdemeanor, punishable upon conviction by fine or imprisonment.

While many barbers and cosmetologists might object to the creation of one Board of Hairstyling because of a loss of professional identity, this problem could be minimized by allowing licensees to choose the title which would appear on the practitioner license issued by the combined Hairstyling Board. The licensee would choose whether to have the title of Licensed Barber, Licensed Cosmetologist or both to appear on the license.

RECOMMENDATIONS

IF THE GENERAL ASSEMBLY DECIDES THAT
CONTINUED STATE REGULATION OF
HAIRSTYLING IS NEEDED, THE GENERAL
ASSEMBLY SHOULD CONSIDER DISSOLVING THE
BOARD OF BARBER EXAMINERS AND THE BOARD
OF COSMETOLOGY, AND CREATING A NEW BOARD
OF HAIRSTYLING.

IF THE GENERAL ASSEMBLY CHOOSES TO
CREATE A SINGULAR BOARD TO REGULATE
HAIRSTYLISTS, THE AUDIT COUNCIL
RECOMMENDS:

(1) THE NEW BOARD SHOULD ISSUE ONLY ONE
PRACTITIONER LICENSE WITH LICENSEES
BEING ALLOWED TO CHOOSE WHETHER THE
TITLE OF LICENSED BARBER, OR LICENSED
COSMETOLOGIST OR BOTH APPEAR ON THEIR
LICENSE;

(2) THE BOARD SHOULD BE COMPOSED OF FIVE
MEMBERS, FOUR HAIRSTYLISTS AND ONE
PUBLIC MEMBER, WITH THE FIRST BOARD
BEING COMPOSED OF THE PRESENT CHAIRMAN
AND VICE-CHAIRMAN OF BOTH THE BOARD OF
BARBER EXAMINERS AND THE BOARD OF
COSMETOLOGY AND ONE PUBLIC MEMBER; AND

(3) THE STATUTES CREATING THE NEW BOARD
SHOULD ALLOW HAIRSTYLING STUDENTS TO
TRAIN IN SHOPS AS WELL AS IN HAIRSTYLING
SCHOOLS AS IS PRESENTLY THE CASE WITH
THE STATE'S BARBERING STATUTES.

BOARD OF BARBER EXAMINERS

BACKGROUND AND ORGANIZATION

Barber regulation was first enacted in the United States in Oregon in 1889. By 1971 all 50 states had enacted legislation regulating barbers. Since 1982, one state, Alabama, has sunsetted its Board of Barber Examiners and a second state, Alaska, is presently in the process of considering sunseting its Board of Barbers and Hairdressers. Another state, Connecticut, while regulating barbers, ended regulation of barbershops in 1980.

The Board of Barber Examiners was created in 1937 to license and regulate the practice of barbering. While the purpose or intent of such regulation is not specified in the Statutes, it can be assumed the intent in South Carolina was similar to that of regulation in other states to protect the public from communicable diseases and unsanitary shop conditions.

The present Board is composed of five members appointed by the Governor for terms of four years. Each member must be an experienced barber who: (1) has practiced the occupation in South Carolina for at least 5 years; (2) is not affiliated with any barber schools or barber supply companies; and (3) serves no more than 3 full terms on the Board.

The primary responsibilities of the Board are to: inspect and license barber schools and shops; examine and license persons wishing to enter the occupation of

barbering; and promulgate and enforce rules and regulations pertaining to barbering in South Carolina. The Board serves as the liaison between licensees and the public, students and barber schools, and members of the occupation. Inherent in this liaison capacity is the investigation and handling of complaints. The Board is empowered to revoke or suspend any license for various causes, including conviction of a felony, gross malpractice, habitual drunkenness and misrepresentation in obtaining a license. Persons who disregard the rules and regulations of the Board may be guilty of a misdemeanor and fined up to \$100 or sentenced to 30 days in jail for each and every violation, as set out in §40-7-220 of the South Carolina Code of Laws.

Barbershops and schools are subject to inspection by the Board at any time during business hours for compliance with sanitary rules and regulations promulgated by the Board. Proper licensing of both shops and barbers is checked during inspections.

Persons wishing to enter the field of barbering must undergo an educational and examination process prescribed by the South Carolina Statutes. The South Carolina Code allows a student the option of barber school or barbershop on-the-job training in seeking licensure. After training as a barber student, a perspective barber must pass an apprentice examination given by the Board and work as a licensed apprentice and pass the registered barber examination. Section 40-7-25 allows a barber assistant to

give shampoos and manicures in a barbershop. As with barbers, barber assistants must also be tested and licensed by the Board. The Board administers its examinations for the various types of licenses monthly at its headquarters.

Because actual figures were not available from the Board, the Audit Council, with the help of the State's Information Resource Management Division's Application, Development and Support Section, estimated that the Board issued 4,892 licenses in FY 84-85 as shown in Table 2.

TABLE 2
SOUTH CAROLINA STATE BOARD OF BARBER EXAMINERS
ESTIMATED NUMBER OF LICENSES ISSUED FY 84-85

<u>Type of License</u>	<u>Number Issued</u>
Registered Barber	2,810
Apprentice Barber	246
Teacher Certificate	22
Barber Student - Barber College	308
Barber Student On-The-Job	205
Barber Assistant	24
Manicurist	4
Barber Shop	1,266
Barber School	7
TOTAL	<u>4,892</u>

All licenses issued by the Board, except the on-the-job instructor permit, barber student permit, and teacher certificate, expire June 30 of each year and must be renewed prior to that date.

SUNSET QUESTIONS AND FINDINGS

- (1) DETERMINE THE AMOUNT OF THE INCREASE OR REDUCTION OF COSTS OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The programs and functions of the Board of Barber Examiners do not directly influence the cost of barber services in South Carolina since the Board does not set prices. However, the Board's existence as a regulatory agency does increase the costs for persons in the occupation. Such occupational costs include educational requirements, examination fees, license renewal fees and costs associated with compliance with other Board regulations for schools.

Licensing requirements may restrict entry into the occupation and thus limit competition, and contribute to higher prices for consumers. The significance of this increase, however, cannot be determined. Also, the Board's existence as a State agency increases indirect governmental costs which are ultimately absorbed by the taxpayer.

(2) WHAT ECONOMIC, FISCAL AND OTHER IMPACTS WOULD OCCUR IN THE ABSENCE OF THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW?

The termination of the Board of Barber Examiners would not represent a threat to the public health, safety or welfare. Licensing is not justified as an argument for protection of health, sanitation or possible harm from chemical solution. Existing State agencies can assume the present Board responsibilities of complaint handling, monitoring and approval of barber schools and sanitation issues. A competitive marketplace would assure the quality and competence of hairstylists without danger to the public.

The economic impact resulting from the elimination of the Board would be approximately \$130,000 annually in fees not collected. The State General Fund would lose approximately \$15,000 annually which results from the difference between fees collected and Board expenditures. In addition, deregulation could cause prices for the consumer to go down since less government regulation could promote more competition and possibly lower prices.

One other impact of the absence of the Board is that barbers would lose the professional enhancement, status and prestige which State regulation brings. However, the advancement of the social and economic

interests of an occupation should not be the role of government and is better left to the occupational and trade associations.

(3) DETERMINE THE OVERALL COSTS, INCLUDING MANPOWER, OF THE AGENCY UNDER REVIEW.

The Board of Barber Examiners has four full-time employees. The Board's Administrative Assistant is responsible for the Board's clerical work, bookkeeping, and daily correspondence. The Board's three investigators are responsible for ensuring compliance with the State's laws, rules and regulations governing barbering. The State is divided into three regions, each the responsibility of one investigator. Within their territories, the investigators are responsible for inspecting all barbershops to ensure compliance with the Board's sanitation and licensing requirements. They must inspect all new barbershops before allowing them to open. They investigate complaints of unlicensed individuals practicing the trade of barbering, and they take any necessary legal procedures to enforce the State's laws, rules and regulations governing barbering.

As shown in Table 3, the annual license fees in FY 84-85 range from \$11.50 for the apprentice barber license to \$65 for the barber school license.

TABLE 3
SOUTH CAROLINA STATE BOARD OF BARBER EXAMINERS
FEE SCHEDULE

<u>Categories</u>	<u>FY 81-82</u>	<u>FY 82-83</u>	<u>FY 83-84</u>	<u>FY 84-85</u>
Registered Barber Exam	\$30.00	\$30.00	\$30.00	\$30.00
Annual License	17.00	19.00	21.00	23.00
Expired License	40.00	40.00	40.00	40.00
Apprentice Barber Exam	30.00	30.00	30.00	30.00
Annual License	8.50	9.50	10.50	11.50
Expired License	25.00	25.00	25.00	25.00
Teacher's Cert. Exam	75.00	75.00	75.00	75.00
Annual License	50.00	50.00	50.00	50.00
Barb. Student Permit Fee	10.00	10.00	10.00	10.00
Barbershop Inspect. and Reg. for New Shops	60.00	60.00	60.00	60.00
Annual License	17.00	19.00	21.00	23.00
Expired License	40.00	40.00	40.00	40.00
Barber School Inspect.	100.00	100.00	100.00	100.00
Annual License	65.00	65.00	65.00	65.00
Reciprocity Fee	65.00	65.00	65.00	65.00
On-The-Job Instructor Permit	25.00	25.00	25.00	25.00

On average, over the past 5 fiscal years, the General Assembly has appropriated back to the Board of Barber Examiners approximately 88% of the revenue raised through the Board's licensing and examination functions.

Over the past 5 fiscal years, the Board's expenditures have increased approximately 40%. The Board spent 68% of their \$108,000 FY 83-84 budget for personal services. This includes the salaries of the Board's four full-time employees, per diem for the Board members, and the salaries of temporary clerical help hired yearly during the peak work period of licenses renewal.

In FY 83-84, over half of the Board's other operating expenses were attributed to 3 categories: (1) 38% (\$13,339) for travel of the Board's investigators and Board members; (2) 13% (\$4,477) for printing; and (3) 12% (\$4,200) was spent for office rental.

(4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE PROGRAM OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

Inefficiencies are costing the Board of Barber Examiners approximately \$62,760, or 68% of their budget, annually. The Audit Council reviewed the operation of the Board of Barber Examiners and found 7 problems that reduce the efficiency of the Board: (1) the Board is inefficient in several management practices spending approximately \$4,400 a year unnecessarily; (2) annual licensing of barbers results in an average loss of approximately \$18,720 every other year to the State; (3) barbershop inspections are unnecessary and cost the Board approximately \$50,000 annually; (4) the Board's apprenticeship requirement should be eliminated; (5) the licensing of barber assistants is unnecessary; (6) the Board's practical exams are unnecessary and cost the Board \$1,200 annually in extra rent; and (7) the Board lacks written administrative procedures.

Management Practices

The Board of Barber Examiners could save approximately \$4,400, or 4% of their budget, annually through better management of resources (see Table 4). The Audit Council, in its review of the Board, found 4 major managerial inefficiencies: (1) the Board could save \$2,000 a year by starting its monthly examinations and Board meetings 2 hours later; (2) the Board could save approximately \$1,400 annually by purchasing supplies through the State's Division of General Services and by having most of its printing done by the State's Information Resources Management's Print Shop; (3) the Board could save approximately \$700 annually by buying a remanufactured model of the copier they presently rent; and (4) the Board could save approximately \$400 a year through more efficient use of the postal system.

TABLE 4
ANNUAL COST SAVINGS

Changing Exams and Meeting Times	\$1,900
Printing and Office Supplies	1,400
Photocopier	700
Board Mail	<u>400</u>
TOTAL	<u><u>\$4,400</u></u>

(1) The Board of Barber Examiners could save approximately \$1,900, or 2% of their budget, annually and accommodate examinees more adequately by starting its examinations and

monthly meetings 2 hours later. The Board of Barber Examiners presently holds its monthly examinations and Board meetings on the second Wednesday of each month. The Board's exams run from 8:00 to 11:00 and the Board meeting usually runs for 1 hour from 11:00 to 12:00.

According to the Board Chairman, the Board has not held meetings the evening before the exams and regular Board meetings. Therefore, it appears that the Board is encouraging its members and inspectors to accumulate lodging, food and per diem bills unnecessarily by setting early morning exams and meeting times. Records show that all but one Board member and one inspector regularly spend the evening before the exams and Board meetings in Columbia, at State expense for their food and lodging. In one case, a Board member who lives only 95 miles from Columbia regularly charges the State for food and lodging the evening before the Board's exams and monthly meetings.

The Board is a State agency spending State funds. Thus, the Board should attempt to be efficient and economical.

By moving the starting time of its monthly exams and meetings back 2 hours to 10:00 and 1:00, the Board could save the \$1,900 spent on lodging, food and per diem bills for the Board members and inspectors to come to Columbia the night before the exams and meetings.

The longest drive any Board member or inspector must make to Columbia is 110 miles or 2.5 hours. Therefore,

Board members, Board inspectors, and examinees should not have to leave earlier than 7:00 in the morning to arrive on time for the Board's monthly exams and meetings that begin at 10:00, with business concluded, projected on past history, at 2:00.

Moving the Board's monthly exams and meetings back two hours would reduce the need for Board members to arrive in Columbia the day before the exams and meetings.

Furthermore, by moving the exam time back to 10:00, the Board would no longer force examinees who live 2 hours or more from Columbia, at additional expense to the examinees, to spend the preceeding night in Columbia or leave home at or before 6:00 a.m. in order to arrive at the exam's starting time.

(2) The Board could save approximately \$1,400, or over 1% of its budget, annually by purchasing supplies and printing through the State's General Services Division and the State's Information Resources Management's (IRM) Print Shop. Presently, the Board buys all of its office supplies and has all of its printing done by private vendors.

The Audit Council compared the prices the Board paid to private vendors for printing during the last three fiscal years to the price that the State's Information Resources Management's Print Shop would have charged for printing the same material. On many of its printing orders, the Board paid 100% more than necessary by contracting with private vendors. In FY 82-83, the Board could have saved \$846,

\$2,058 in FY 83-84, and \$743 in FY 84-85, an annual average of \$1,215 by having IRM's Print Shop do its printing whenever IRM's prices were lower.

The Audit Council also compared the prices the Board paid to private vendors for purchasing office supplies, during the last three fiscal years, to General Services prices for the same or equivalent items. If the Board had compared General Services' prices for its office supplies needs to those of the private vendors and purchased from General Services when General Services' prices were lower, the Board could have saved \$140 in FY 82-83, \$219 in FY 83-84 and \$161 in FY 84-85, an annual average of \$173.

(3) The Board could have saved approximately \$2,825 over the last 3.5 fiscal years by buying instead of renting a photocopier. During the past 3.5 fiscal years, the Board of Barber Examiners has rented a photocopier for its light copying needs (the Audit Council has estimated that the Board makes approximately 2,700 copies in a normal year) at a cost of approximately \$4,750, or an average cost of approximately \$1,350 per year. The Board could have bought the same machine refurbished, that it has rented these past 3.5 fiscal years, for \$1,555 in FY 81-82. This amounts to only \$57 more than the Board paid to rent the same machine in FY 82-83. Furthermore, the Board could now buy the same model copier, remanufactured, for only \$430 more than it pays annually to rent it.

When questioned by the Audit Council as to why the Board rented its copier instead of buying one, Board staff indicated this had been an historical Board practice.

While the Board's rental contract does include service and maintenance, service on a Board-owned copier could be bought for only \$237 per year. According to a salesman from the company that rents the Board its copier, a refurbished or remanufactured copier is good for an organization which has light copier needs and would not be a greater liability to an organization than would a new machine. The estimated lifespan of a refurbished copier has been estimated at five to seven years and a remanufactured machine has an estimated lifespan of seven to ten years or one million copies.

By buying a refurbished copier instead of renting, the Board could have saved \$2,825 over the past 3.5 fiscal years. If the Board of Barber Examiners would now buy a remanufactured model, the Audit Council estimates the Board could save approximately \$4,750 or \$680 annually over the expected life of the copier.

(4) Through more efficient use of the postal services offered by the Post Office and the State, the Board of Barber Examiners could save approximately \$400 per year. This savings would occur from 2 things - the Board no longer renting its Post Office Box would save approximately \$310 annually, and the Board taking advantage of the State

contract for presorting of mail would save approximately \$90 annually.

The Board unnecessarily maintains a Post Office Box. While the actual cost of renting the Post Office Box is low, the travel cost of the Board's Administrative Assistant driving to the Post Office every working day to pick up the mail is 12 times the annual box fee. The Board pays \$26 a year to the Post Office to rent the box, and the Board pays approximately \$282 a year in travel costs to the Board's Administrative Assistant to drive to the Post Office every working day to pick up the mail.

The Board should have the Post Office deliver its mail to the Board's office free of charge. Presently, the Post Office delivers all the Board's mail, which is not addressed to the Board's Post Office Box, to the Board office free of charge.

The Board could save \$90 per year by having its license mailing presorted. The Board presently pays the full postage rate for its annual license mailing of 3,000 pieces of mail. This results in the unnecessary expenditure of \$90 annually.

The Board could have G. & H. Mail Service, which holds the State contract to presort State mail, presort its annual license mailing. Thirty-four other State agencies presently use G. & H. on either a full-time or part-time basis. The Board could save 3 cents on every piece of mail that G. & H. Mail Service picked up and presorts since the Post Office

gives a discount of 4 cents per ounce for presorted mail, and G. & H. charges 1 cent for each piece of mail that it presorts.

Board mailing practices unnecessarily raise the Board's operating costs. As with the Board's other costly management inefficiencies, this cost is borne by the industry. If the Board would economize, industry assessment could be lowered.

RECOMMENDATIONS

IF THE GENERAL ASSEMBLY CHOOSES TO
REESTABLISH THE BOARD OF BARBER
EXAMINERS:

(1) THE BOARD SHOULD MOVE ITS MONTHLY
EXAMS AND MEETINGS BACK TWO HOURS TO
10:00 A.M. AND 1:00 P.M. RESPECTIVELY.

(2) THE BOARD SHOULD PURCHASE ITS OFFICE
SUPPLIES THROUGH GENERAL SERVICES AND
HAVE ITS PRINTING DONE BY THE
INFORMATION RESOURCES MANAGEMENT'S PRINT
SHOP WHENEVER GENERAL SERVICES' AND
INFORMATION RESOURCES MANAGEMENT'S
PRICES ARE LOWER THAN THOSE OF PRIVATE
VENDORS.

(3) THE BOARD SHOULD BUY A
REMANUFACTURED MODEL OF THE COPIER THEY
PRESENTLY RENT.

(4) THE BOARD SHOULD NO LONGER RENT A
POST OFFICE BOX AND INSTEAD HAVE ALL OF
ITS MAIL DELIVERED TO THE BOARD'S
OFFICE. ALSO, THE BOARD SHOULD HAVE ITS
ANNUAL LICENSE MAILING PRESORTED.

Annual Licensing of Barbers

Annual licensing of barbers is costing the State unnecessarily. The State could save approximately \$5,870 in administrative costs and raise approximately \$12,850 in increased interest over a 2-year period through the biennial licensing of barbers. This would produce a net gain to the State, over 2 years, of approximately \$18,720.

Sections 40-7-170, 40-7-180, and 40-7-300 of the South Carolina Code of Laws require annual licensing of barbers and barbershops in the State. The annual licenses all expire on June 30, causing a peak clerical work period between June 1 and July 31. Since the clerical staff of the Board is unable to handle this peak period, the Board has had to hire temporary clerical help for this period. Furthermore, the Board's Administrative Assistant estimates that 50% of her time during these 2 months is spent solely on relicensing.

Seventeen, including two southeastern states, Virginia and Florida, of the forty-nine states which regulate barbering issue biennial licenses, and another state, Indiana, issues a four-year barber license. The Audit Council could find no evidence of harm to the consumer from the biennial licensing of barbers in those states which license barbers on a biennial basis.

Table 5 shows that if the licensing of barbers in South Carolina was done on a biennial basis, this would produce a net gain to the State of approximately \$18,720 over a 2-year period.

TABLE 5

PROJECTED SAVINGS/REVENUES FROM BIENNIAL LICENSURE

Reduction in Temporary Clerical Help	\$ 4,000
Reduction in Printing Costs	1,210
Reduction in Mailing Costs	660
Revenue from Interest	<u>12,850</u>
TOTAL Savings/Revenues	<u>\$18,720</u>

This net gain would occur from savings in 3 areas and interest earned on fees: (1) eliminating the need every other year of having to spend \$4,000 for temporary clerical help; (2) decreasing printing costs of licenses by approximately \$1,210 every other year; (3) decreasing mailing costs by approximately \$660 every other year; and (4) a final effect would be the interest paid to the State

if collection of licensing fees were made for a 2-year rather than a 1-year period. The interest paid to the State, if the extra \$130,000 collected through licensing fees was allowed to earn interest for 12 months, would result in revenues of approximately \$12,850.

Furthermore, biennial licensing would eliminate the need every other year of the Board's Administrative Assistant having to spend 50% of her time during June and July on licensing matters.

RECOMMENDATION

IF THE GENERAL ASSEMBLY CHOOSES TO REESTABLISH THE BOARD OF BARBER EXAMINERS, THEN THE GENERAL ASSEMBLY SHOULD CONSIDER AMENDING §40-7-180, §40-7-170 AND §40-7-300 OF THE SOUTH CAROLINA CODE OF LAWS SO THAT BARBER LICENSES ISSUED BY THE STATE BOARD OF BARBER EXAMINERS EXPIRE ON JUNE 30 OF EVEN-NUMBERED YEARS. FEES SHOULD REMAIN AT THE CURRENT RATE BUT EACH COLLECTION SHOULD BE FOR A TWO-YEAR PERIOD.

Shop Inspections

The Audit Council could find no evidence that the inspection of barbershops by the Board protects the public's

health and welfare. Shop inspections only ensure that practitioners' licenses are current. In its 1979 review of the Board, the Audit Council found Board minutes revealing "a shop which had not been inspected in over 13 years, from February 1964 to November 1977."

The Board has reported to the Budget and Control Board that it inspects each shop 3 times annually and its response to the Council's 1979 review stated: "All barbershops in the State are inspected up to two to three times every three months." However, no evidence could be found that in the 1-year period from March 14, 1984 through March 13, 1985 that 31%, or 144, of the shops in one inspector's territory and 23%, or 86, of the shops in a second inspector's territory had been inspected. In the Board's third inspection territory, the Board could not offer documentation to adequately assess the number of shops inspected during the time period. Also there was no evidence found that three of the five Board members' shops being inspected during this time period. Furthermore, the Board has not created any adequate management tool to track and ensure at a minimum the annual sanitation inspection of every shop in the State.

In Connecticut and Virginia, barbershops are inspected on a complaint only basis. Furthermore, in 1980 Connecticut deregulated its 2,000 barbershops and beauty salons. Yet, the Connecticut Department of Health Services has found no "significant health risks to have resulted from the

deregulation of salons." In assessing the impact of deregulation of barbershops and beauty salons and the subsequent inspection of shops only upon complaints, the Assistant Director of the Connecticut Department of Health Service's Division of Medical Quality Assurance, stated to the Audit Council:

...The deregulation of salons...became effective...July 1, 1980. The professional community predicted that we would have outbreaks of head lice and other public health hazards. None of this proved to be true. In some communities, the city or town established their own inspection and licensure requirements. In other cases salons were regulated via the city health department or via zoning. Most cities and towns, however, have not seen need to implement any new ordinances to regulate salons. [Emphasis Added]

...In brief, [the Connecticut Department of Health Services has] not found any significant health risks to have resulted from the deregulation of salons. [Emphasis Added]

The Audit Council could find no evidence that lack of barbershop inspections would create a health situation different in South Carolina than that which occurred when Connecticut deregulated its hair salons. According to Board records, the Board has received only three complaints in the past five years concerning the sanitation of a barbershop, and one of these complaints concerned the operation of a taxidermy shop inside a barbershop. There is no evidence that communicable diseases have been passed by barbers to customers even though the Board has failed to adequately inspect South Carolina's barbershops. The Chief of the

South Carolina Department of Health and Environmental Control's Bureau of Communicable Disease Control stated to the Audit Council:

It would be extremely difficult to document that any disease was actually transmitted by a barber or cosmetologist from the records that we receive. However, in my experience as State Epidemiologist for the past nine years, I have no personal recollection that any specific communicable disease was reported as having been transmitted by a barber or cosmetologist in the practice of their professional activities.

The Board has never closed down a barbershop or even taken one to court for violation of the sanitation code during the last three years. Yet according to the Board, one shop in Columbia:

...has been a problem shop for the last eight (8) years. The shop has not been operating with the best of sanitary conditions.

In reference to the same shop, at the August 10, 1976 Board meeting one of the Board inspectors stated to the Board:

The...shop...should be closed down. It does not comply with the sanitary rules and regulations and the shop is in poor condition. The owner of the shop said repeatedly that she would have the place cleaned up. They have not done anything much about it.

By spending money to inspect barbershops when the inspections do not protect the health and welfare of the public, the Board has wasted money unnecessarily. In FY 83-84 alone, the Board spent approximately \$50,000 for shop inspections.

RECOMMENDATION

IF THE GENERAL ASSEMBLY CHOOSES TO REESTABLISH THE STATE BOARD OF BARBER EXAMINERS, THE GENERAL ASSEMBLY SHOULD CONSIDER AMENDING §40-7-170 AND §40-7-200 OF THE SOUTH CAROLINA CODE OF LAWS TO DEREGULATE BARBERSHOPS AND TRANSFER THE INSPECTION OF SHOPS ON A SANITATION COMPLAINT BASIS ONLY TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL.

Apprenticeship Licensure

In its 1979 review, the Audit Council recommended elimination of the apprenticeship requirement for licensure because it was a restrictive practice. While the apprenticeship period has been shortened from 18 months to 12 months, it is still a requirement for full licensure. Yet it is restrictive and provides no additional protection to the public.

After completion of the required 1,500 hours in a barber school or 12 months shop training, Statutes require the student to pass a written and practical examination given by the Board in order to serve as a licensed apprentice barber for a period of 12 months. There is no difference in the price or type of service which the apprentice or registered barber may offer a customer. The

only distinction between an apprentice and a registered barber is that apprentices cannot own or manage shops, and they must work under the supervision of a registered barber.

The requirement of serving an apprenticeship needlessly restricts entry into the barbershop business. The mobility of qualified persons within an occupation is limited by such unjustified restrictions. The marketplace can identify and evaluate the competency of the novice barber.

The apprenticeship period is a superficial barrier which restricts entry into the occupation and benefits only those barbers already established in the occupation. By forcing apprentices to work under registered barbers, the occupation is controlling its own membership. If a person is unable to get a job as an apprentice, then he or she cannot become fully licensed. In addition, the initial earning capabilities of the new barber are restricted since he cannot own or manage his own barbershop. Thus, the number of shops is limited, reducing competition for barbers already in business. Such restrictive practices may result in higher prices to the public.

RECOMMENDATION

IF THE GENERAL ASSEMBLY CHOOSES TO
REESTABLISH THE BOARD OF BARBER
EXAMINERS, THE GENERAL ASSEMBLY SHOULD
CONSIDER AMENDING §40-7-120 OF THE SOUTH
CAROLINA CODE OF LAWS BY REMOVING THE

REQUIREMENT OF A 12-MONTH APPRENTICESHIP
AS A QUALIFICATION TO BECOMING A
REGISTERED BARBER.

Licensing of Barber Assistants

The Audit Council in its 1979 review of the Board found that the "regulation and licensure of barber assistants is not warranted and does not protect the public." After its present review of the Board, the Council stands by this contention.

The barber assistant license is required by §40-7-25 of the South Carolina Code of Laws for an individual to give shampoos and manicures in barbershops. Barber assistants are not legally allowed to give shaves or haircuts to customers. Section 40-7-25 requires that before a person becomes a barber assistant, they must work under the supervision of an approved registered barber for six weeks, pass a written test composed by the Board, and give a practical demonstration of a shampoo and/or manicure acceptable to the Board.

There are only 24 people licensed by the Board as barber assistants and 4 people are licensed by the Board as manicurists (see p. 64). The services which these 24 barber assistants can provide are extremely limited and no harm exists to the public from improperly done shampoos or manicures. The regulation of these two activities, which millions of Americans do every day without incident, is only

another way of restricting entry into the market place and exemplifies unnecessary government regulation.

RECOMMENDATION

IF THE GENERAL ASSEMBLY CHOOSES TO REESTABLISH THE BOARD OF BARBER EXAMINERS, IT SHOULD END THE STATE REGULATION OF THE GIVING OF SHAMPOOS AND MANICURES IN BARBERSHOPS.

Practical Exams

The Board's practical exams are unnecessary and do not protect the public's health and welfare. Sections 40-7-100 and 40-7-120 of the South Carolina Code of Laws authorize the Board to conduct examinations and prescribe rules for such examination. Statutes require both written and practical tests for registered barber applicants.

The Board requires apprentice barber license applicants to take a standardized written apprentice barber test and a practical exam requiring the applicant to give a live model a tapered hair cut. The Board requires registered barber applicants to take a second written standardized test and give a live model any style hair cut that the applicant wishes. Passage of the practical portion of the exams is based entirely on the subjective judgement of two Board members.

Even though the Board's tests should ensure the protection of the public, only 5 out of a possible 100 points on the Board's practical exams are concerned with public health and safety issues. The Board has no guarantee that the procedures demonstrated by applicants will be followed in practice. The Board needs only to ascertain that applicants possess the knowledge to practice safely.

In addition, the Board's requirement of apprentice applicants having to give a tapered hair cut does not take into account changes in the industry during the last 10 to 15 years. The Audit Council, in its survey of the industry, found that less than 20%, 3 of 15, of the new barbers licensed in the last 10 years by the Board do more than 20% of their business in tapered hair cuts.

State officials from Connecticut and Oregon told the Audit Council that Connecticut and Oregon do not require practical examinations and have experienced no problems with licensure without a practical exam. Further, barber students, whether they train in a school or in a shop, legally practice barbering without ever being tested. The Audit Council could find no evidence that allowing barber (and cosmetology) students to cut hair and apply chemicals without first being tested poses a threat to public safety.

The requirement that license applicants must pass a practical exam results in unnecessary taxation of the industry. The Board rents 28% more space than is necessary for its operation in order to hold its practical exams in

its office. The Board pays \$1,200 annually to rent this space which is used on average less than 3 hours a month. The Board has also had to purchase 5 barber chairs at a cost of \$375, in order to hold its practical exams in its office. By eliminating the practical exam, the Board could save money by moving into a smaller office and selling its barber chairs.

RECOMMENDATION

IF THE GENERAL ASSEMBLY CHOOSES TO REESTABLISH THE BOARD OF BARBER EXAMINERS, THE GENERAL ASSEMBLY SHOULD CONSIDER AMENDING §40-7-120 OF THE SOUTH CAROLINA CODE OF LAWS BY REMOVING SECTION 5(A)'S REQUIREMENT OF A PRACTICAL EXAM AND THE BOARD SHOULD REMOVE ITS REQUIREMENT THAT APPLICANTS FOR THE APPRENTICE BARBER LICENSE PASS A PRACTICAL EXAM.

Written Administrative Procedures

The Board of Barber Examiners has not developed written policies and procedures concerning the operations and administration of the agency. Furthermore, the Board has no policy statement detailing the Board's formal and informal procedures, such as administrative hearing procedures, as required by §1-23-140 of the South Carolina Code of Laws.

Section 1-23-140 requires that all State agencies:

(1) Adopt and make available for public inspection a description of its organization stating the general course and methods whereby the public may obtain information or make submissions or requests.

(2) Adopt and make available for public inspection a written policy statement setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency.

Written procedures are evidence of the existence of a system of operating controls. Such manuals for the administration and control of agency activities are generally accepted as principles of good management. It is difficult to hold employees accountable for verbal or nonexistent guidelines. Unwritten procedures can easily be misinterpreted, erroneously communicated and cause training and orientation of employees to be more time-consuming and confusing.

The absence of written guidelines concerning agency hearings and courses of action against licensees may cause the agency to be inconsistent in its application of the State laws and regulations. Thus, the Board's lack of written procedures may cause the Board to violate the guarantee of equal protection under the law.

RECOMMENDATIONS

IF THE GENERAL ASSEMBLY CHOOSES TO REAUTHORIZE THE BOARD OF BARBER EXAMINERS, THE BOARD SHOULD COMPLY WITH §1-23-140 OF THE SOUTH CAROLINA CODE OF LAWS AND ALSO DEVELOP AND USE AN ADMINISTRATIVE POLICIES AND PROCEDURES MANUAL. ALL PROCEDURES SHOULD INCORPORATE STATE REQUIREMENTS AND GOOD MANAGEMENT PRACTICES TO ENSURE THAT EFFICIENCY WILL BE ACHIEVED. IN GENERAL, THE PROCEDURES SHOULD BE CLEAR, CONCISE AND COMPLETE ENOUGH TO:

(1) SPECIFICALLY RELATE THE DUTIES AND RESPONSIBILITIES TO ALL PERSONNEL AFFECTED BY THEM; AND

(2) PROVIDE A STEP-BY-STEP DESCRIPTION OF PROCEDURES AND PROCESSES FOR THE ACCOMPLISHMENT OF POLICY OBJECTIVES.

(5) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS ENCOURAGED THE PARTICIPATION OF THE PUBLIC AND, IF APPLICABLE, THE INDUSTRY IT REGULATES.

The Board has made little effort to ensure public and industry participation in its activities. It has not announced its monthly meetings through the news media or placed notices in the State's major newspapers. Furthermore, when members of the public or industry do come to the Board's monthly meetings, the Board makes no effort to accommodate them. At each of the five Board meetings which an Audit Council staff member attended, the Board shut the door to its meeting room before beginning and then called the members of the public and the industry into the Board room one at a time.

Two problems which further exacerbate this situation are: (1) the Board has no public members; and (2) the Board has not been responsive to requests for information made by the public and industry.

Public Member

The Board of Barber Examiners is required by §40-7-30 of the South Carolina Code of Laws to be composed of 5 experienced barbers who have practiced for at least 5 years in the State.

Adding a public member to the Board would help balance the interests of the barber members. Only South Carolina, Arkansas and Mississippi of the southeastern states prohibit public members from serving on their boards regulating barbering. Five states, Florida, Georgia, Kentucky, North Carolina and Tennessee require at least one public member on their boards. In addition, the Board has gone on record as favoring a public member on the Board.

RECOMMENDATION

IF THE GENERAL ASSEMBLY CHOOSES TO
REESTABLISH THE BOARD OF BARBER
EXAMINERS, THE GENERAL ASSEMBLY SHOULD
CONSIDER AMENDING §40-7-30 OF THE SOUTH
CAROLINA CODE OF LAWS TO REQUIRE THAT
ONE SEAT ON THE BOARD BE FILLED BY A
MEMBER OF THE GENERAL PUBLIC BEGINNING
WITH THE NEXT VACANCY.

Requests for Information

The Board did not supply the public and industry, upon request, with the Code and regulations covering barbering in South Carolina for the 2-year period from March 1982 through February 1984. For two years, the Board wrote back to individuals who requested such information that the Board was "in the process of getting together a current printing

of the laws so that we may be able to send to interested barbers in the near future."

The absence for two years on the part of the Board to fulfill such requests shows a lack of commitment and poor planning.

Section 40-7-190 of the South Carolina Code of Laws requires: "a copy of the rules and regulations adopted by the Board shall be furnished by the Board to the owner or manager of each barbershop or barber school in the State..." Good management would dictate that the Board help applicants and licensees keep up with the State laws and regulations governing barbering. Furthermore, the public needs such information in order to understand the Board's function. Regulation 93-260 of the Board of Examiners for Nursing Home Administrators requires the Board of Examiners for Nursing Home Administrators to:

...furnish copies of its regulations for a fee, which has been determined by the Board to be sufficient to cover the actual cost of copying. A copy will be sent without charge to Board members, state agencies upon request, applicants after the application fee has been paid, and licensees who have not previously received a copy.

In order to abide by the Code and regulations governing barbering in the State, it is necessary that licensees know the laws and rules and regulations governing barbering. By not distributing for two years, upon request, copies of the Code and regulations governing barbering in South Carolina,

the Board has made it difficult for some barbers to comply with the Code and regulations governing barbering.

RECOMMENDATION

IF THE GENERAL ASSEMBLY CHOOSES TO REESTABLISH THE BOARD OF BARBER EXAMINERS, THE GENERAL ASSEMBLY SHOULD CONSIDER AMENDING §40-7-190 OF THE SOUTH CAROLINA CODE OF LAWS TO READ:

THE BOARD SHALL FURNISH COPIES OF THE CODE AND ITS RULES AND REGULATIONS WHICH GOVERN THE PRACTICE OF BARBERING IN THIS STATE FOR A FEE, WHICH HAS BEEN DETERMINED BY THE BOARD TO BE SUFFICIENT TO COVER THE ACTUAL COST OF COPYING. A COPY WILL BE SENT WITHOUT CHARGE TO BOARD MEMBERS, STATE AGENCIES UPON REQUEST, APPLICANTS AFTER THE APPLICATION FEE HAS BEEN PAID, AND LICENSEES WHO HAVE NOT PREVIOUSLY RECEIVED A COPY.

- (6) DETERMINE THE EXTENT TO WHICH THE AGENCY DUPLICATES THE SERVICES, FUNCTIONS AND PROGRAMS ADMINISTERED BY ANY OTHER STATE, FEDERAL OR OTHER AGENCY OR ENTITY.

The Board's functions duplicate the services of several other State agencies. The Board's regulation of the hair styling profession is duplicative of the regulation of the industry by the Board of Cosmetology (see p. 13). The Board's handling of complaints is duplicative of the services and functions of the

State's Department of Consumer Affairs. The approval of barber schools and regulation of barber education is performed by both the Board of Barber Examiners and the State Department of Education through its Division of Trade and Industrial Education and its State Approving Section. Furthermore, the State's Department of Health and Environmental Control through its local health departments has responsibility for maintaining health standards.

(7) EVALUATE THE EFFICIENCY WITH WHICH FORMAL PUBLIC COMPLAINTS FILED WITH THE AGENCY CONCERNING PERSONS OR INDUSTRIES SUBJECT TO THE REGULATION AND ADMINISTRATION OF THE AGENCY UNDER REVIEW HAVE BEEN PROCESSED.

The Board still has problems with its handling of complaints. In its 1979 review, the Audit Council recommended that the Board of Barbers create, use and maintain a central complaint log, a standard complaint form and written policies and procedures for the assignment, investigation and resolution of complaints. The Board has failed to implement any of these recommendations. Since this review, the Board has begun storing complaints which it receives.

The Audit Council reviewed the Board of Barber Examiners' complaint files and found: (1) there is no central complaint log providing for documentation of

case progress; (2) the Board has no standard complaint form; and (3) there are no written policies and procedures for the assignment, investigation and resolution of complaints. Each of these problems are discussed below.

In reviewing the Board's 5 complaint files, it was found that the Board had received 75 complaints. These 75 complaints can be broken down into 4 general types of complaints: (1) complaints dealing with license problems (mainly complaints about unlicensed individuals barbering illegally); (2) complaints by consumers concerning dissatisfaction over a haircut; (3) complaints from barber students about how barber schools had treated them and counted their hours of training; and (4) complaints from cosmetologists charging barber schools with saying they taught cosmetology. Of the 4 types of complaints received by the Board, 52% (39) dealt with licensing problems. Thirty-two of these thirty-nine complaints concerned unlicensed individuals practicing barbering. Only three complaints concerned the sanitation conditions of a shop. In 1982, one was transmitted to the Board via the State Department of Health and Environmental Control, reporting "deer heads, fish heads, etc." in a barber shop. The Board subsequently ordered the barber to remove his taxidermy business from his barbershop.

The Board failed to implement the Audit Council's 1979 recommendations to create, use and maintain a central complaint log, a standard complaint form, and written policies and procedures dealing with complaints.

By not maintaining a central complaint log the Board makes it difficult to track problem barbers. Furthermore, information on the number of complaints reported by dissatisfied customers could prove useful to the public in choosing a barber, although no real risks or dangers are present in such a choice. A standard complaint form and written policies and procedures would help to ensure systematic and appropriate handling of complaints.

RECOMMENDATIONS

IF THE GENERAL ASSEMBLY CHOOSES TO REESTABLISH THE BOARD OF BARBER EXAMINERS, THE BOARD SHOULD DEVELOP AND USE:

(1) A CENTRAL COMPLAINT LOG DOCUMENTING THE NATURE OF COMPLAINT, DATE OF COMPLAINT AND MEANS OF CONTACT, AND ACTION TAKEN BY THE BOARD;

(2) A STANDARD COMPLAINT FORM; AND

(3) WRITTEN POLICIES AND PROCEDURES FOR
THE ASSIGNMENT, INVESTIGATION AND
RESOLUTION OF COMPLAINTS.

- (8) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW
HAS COMPLIED WITH ALL APPLICABLE STATE, FEDERAL AND
LOCAL STATUTES AND REGULATIONS.**

There are no federal regulations governing barbering. The Audit Council in its present review found that the Board has not complied with all applicable State Statutes and regulations and in so doing has acted without legislative approval. The Board has: (1) paid its inspectors for at least the last 5 fiscal years for work not rendered; (2) the Board has created and enforced rules upon the industry beyond its statutory authority; (3) the Board grades the "attitude" of barbers during shop inspection even though a good "attitude" is not a requirement of the Statutes or regulations; (4) the Board allows some barber students to train part-time although Regulation 17-8 prohibits this; (5) the Board has not developed an annual record of its licensing proceedings and annually submitted such records to the Secretary of State as required by §40-7-80 of the South Carolina Code of Laws; and (6) the Board has neither enforced

nor rescinded Regulation 17-30. Each of these six items are detailed below.

Inspectors Work Part-Time

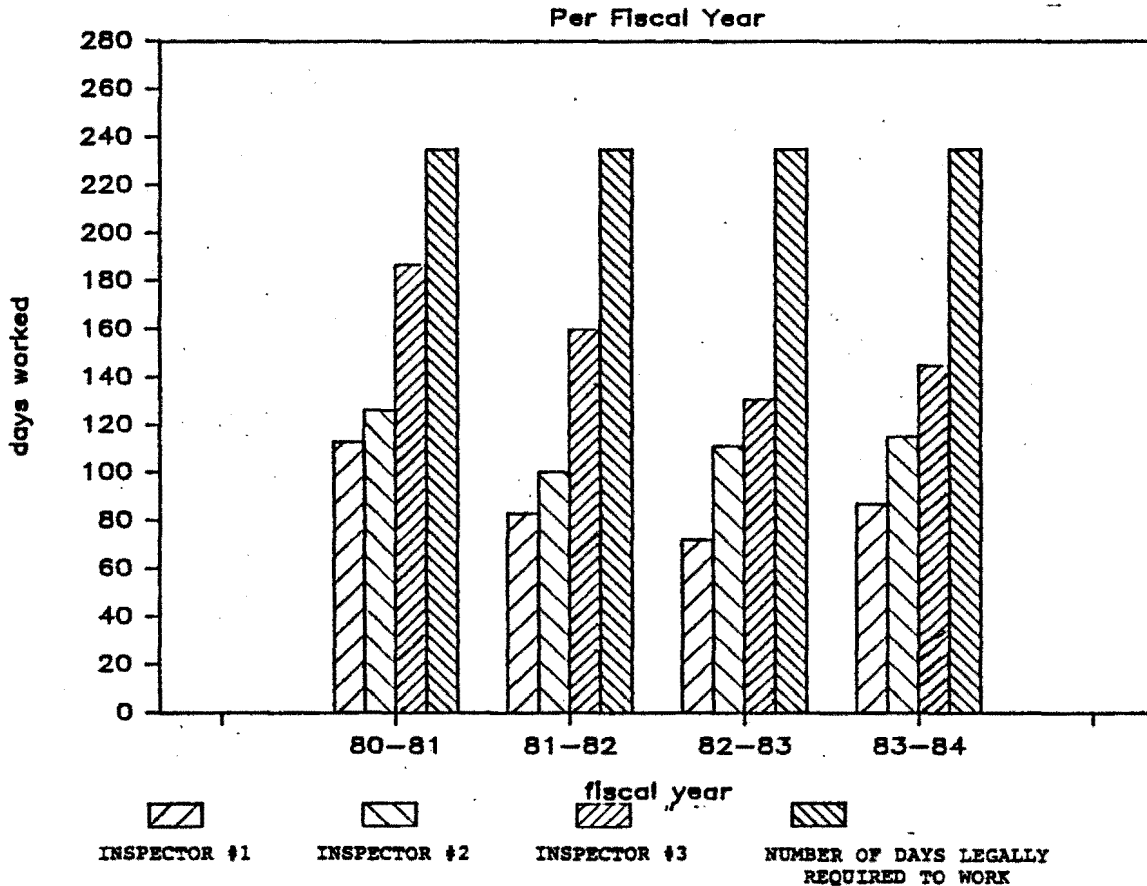
The Board's inspectors have worked part-time, while getting paid full-time wages, resulting in a waste by the Board of approximately \$85,000 over the last 5 fiscal years. Furthermore, evidence shows this situation may have existed since at least April of 1976.

The Audit Council analyzed Budget and Control Board travel support documents for the Board of Barber Examiners' 3 inspectors for the period FY 80-81 through FY 84-85. According to position questionnaires, the inspectors work 100% of the time in the field, and the inspectors drive their own cars and are reimbursed by the State for mileage. Thus, the travel support documents show days the inspectors worked.

The following graph shows the number of days worked over the 4 fiscal years 1980-81 through 1983-84 by the Board's inspectors. The disparity between the number of days the inspectors worked and the number of days they were/are legally required to work accounts for the approximately \$85,000 spent on salaries not recovered in services.

TABLE 6

NUMBER OF DAYS WORKED BY INSPECTORS



The Board of Barber Examiners' inspector positions are full-time positions. Yet, during the past five fiscal years, the Board's inspectors have worked only part-time. This has occurred with the knowledge of the Board. The Audit Council noted two times in the Board minutes where the Board ordered its inspectors to work less than full-time. At the April 14, 1976 Board meeting, the Board ordered its inspectors to work only 1 or 2 days a week. According to the minutes of this meeting, "The Board discussed the situation of the inspectors getting paid their salary but

not working. [A Board member] suggested that they [the inspectors] work 1-2 days a week." After this the Board told the inspectors to "inspect only the dirty shops and complaints." On December 14, 1983, the Board ordered its inspectors not to work until after the New Year.

The Board's inspector positions are listed by the Board on the inspectors position questionnaires and funded by the General Assembly as full-time jobs. Therefore, the Board's inspectors should be working a 37.5-hour week as required by the State's Division of Human Resource Management Regulations. State Regulation 19-703.02 states: "...The workweek for each full-time [State] employee shall be no less than 37.5 hours per week."

Not only do the travel support documents show days worked, but they also show time worked by the inspectors. A test of documents shows that the 3 inspectors worked an average of 7.94 hours to the day, on days worked. This amounts to an average of 26 extra minutes per day over the standard 7.5 hour day. Table 6 demonstrates that these extra minutes do not compensate for days not worked.

By paying the inspectors for working a full-time job, when they are only working part-time, the Board of Barber Examiners has wasted \$85,000 over the last 5 fiscal years; and the Board, its inspectors and clerical staff may have violated State Regulation 19-703 and §8-11-30 of the South Carolina Code of Laws. State Regulation 19-703.03 requires

that the Board keep an accurate record of all hours worked and all leave taken. The Regulation states:

- A. The minimum full-time workweek is 37.5 hours.
- B. Each agency is required to keep an accurate record of all hours worked and all leave taken. Leave shall be recorded in the appropriate categories and shown as either paid leave or leave without pay.
- C. The ultimate responsibility for the accuracy and proper maintenance of attendance and leave records rests with the agency head.
- D. Falsification of any attendance or leave record shall be cause for disciplinary action up to and including dismissal.

Additionally, §8-11-30 states:

It shall be unlawful for anyone to receive any salary from the State or any of its departments which is not due, and it shall be unlawful for anyone in the employ of the State to issue vouchers, checks or otherwise pay salaries or moneys that are not due to State employees of any department of the State...Any violation of the provisions of this section shall be punishable by a fine of not more than five thousand dollars or by imprisonment for not more than five years, either or both, in the discretion of the court.

If §8-11-30 has been violated, it could be argued that present and past Board members and the Board's staff have violated §16-17-410 which states:

The crime known to the common law as "conspiracy" is hereby defined as a combination between two or more persons for the purpose of accomplishing a criminal or unlawful object or an object neither criminal nor unlawful by criminal or unlawful means. The crime of conspiracy is hereby declared to be a misdemeanor, and any person found guilty of the crime of conspiracy shall be

sentenced to pay a fine of not more than five thousand dollars or to be imprisoned for not more than five years...

The Audit Council, on May 22, 1985, reported to the Attorney General, the possibility that the Board, its members and its inspectors may have violated the State Statutes and regulations. On advice of the Attorney General's Office, the Audit Council referred this case to the Fifth District Solicitor.

RECOMMENDATION

IF THE GENERAL ASSEMBLY CHOOSES TO REESTABLISH THE BOARD OF BARBER EXAMINERS, THE BOARD AND ITS STAFF SHOULD COMPLY WITH §8-11-30 OF THE SOUTH CAROLINA CODE OF LAWS AND STATE REGULATION 19-703.02 AND 19-703.03 BY REQUIRING ALL EMPLOYEES TO WORK 37.5 HOURS A WEEK AND KEEPING ACCURATE RECORDS OF ALL HOURS WORKED AND ALL LEAVE TAKEN.

Statutory Authority of the Board

The Board of Barber Examiners and its staff have selectively created and enforced Board decisions, as if they were regulations, in excess of the statutory authority granted to the Board. This has resulted in a lack of uniform treatment and unnecessary restrictions on the

industry. The Administrative Procedures Act (APA) requires that all new rules and regulations which have general public applicability be processed as specified in the APA. The Board of Barber Examiners has not followed legal procedures for developing such "regulations." Instead, it has simply voted at Board meetings to create new "regulations" which would affect the industry or individuals and then implemented them. The following are examples of the Board and its staff selectively creating and enforcing "regulations" in excess of its statutory authority.

1. The Board violated §40-7-240 of the South Carolina Code of Laws by refusing to issue an on-the-job training permit to a barber student who wished to transfer from barber school training to shop training. In excess of its statutory authority, the Board ordered the barber student to stay in barber school for two more months before transferring to training in a barbershop. This occurred even though State Statutes and regulations allow a barber student to choose freely between the two types of training.

Section 40-7-240 states:

The Board may either refuse to issue or renew or may suspend or revoke any certificate of registration for any one or combination of the following causes:

1. Conviction of a felony...;
2. Gross malpractice or gross incompetency;
3. Continued practice by a person knowingly having an infectious or contagious disease;
4. Advertising by means of known false or deceptive statements;
5. Habitual drunkenness or habitual addiction to...habit-forming drugs;...
7. ...being found guilty of fraud or misrepresentation in obtaining a license.

Furthermore, the Board, in similar situations, has allowed barber students training in schools to transfer to shop training without waiting.

2. The Board issues a manicurist license although no such license is authorized by the State Statutes. According to the Board's Administrative Assistant, the manicurist license only allows the holder to legally perform manicures in a barbershop. Yet, §40-7-25 states:

No person shall give shampoos or manicures in a barbershop unless a license as a barber assistant has been issued to him by the Board of Barber Examiners. [Emphasis Added]

3. The Board directed an inspector to collect a refund for a dissatisfied customer although State Statutes and regulations do not empower the Board to do so.
4. The Board has required a barbershop owner to upgrade his shop to a "Grade A" shop in order to be able to train an on-the-job barber student even though State Statutes and regulations include no such requirement.
5. The Board has allowed barber schools and barbershops to train barber students on a part-time basis in violation of State Regulation 17-8 (see p. 70).
6. The Board has implemented the grading of attitude as part of its shop inspection function (see p. 67). Yet, attitude is the only criteria on the Board's inspection instrument which is not in Title 40, Chapter 7 of the South Carolina Code of Laws or State Regulation 17-50.
7. A Board inspector violated State Regulation 17-50 by refusing to give a shop owner an inspection grade sticker to display showing the shop's latest inspection grade when said grade improved from a "B" to an "A" until the shop received two consecutive "Grade A" inspections.
8. A Board inspector, on one occasion, did not grade a shop because it would have received a grade less than an "A" and the shop owner only wanted to receive a grade of "A".
9. The Board requires that: "Any information concerning the opening of a barber school in this State must be requested from the South Carolina Board of Barber Examiners at one of their monthly Board meetings." The Code and regulations dealing with barbering contains no such requirement.

10. The Board used an oral opinion from its Attorney General lawyer that "...any type of business other than barbering occurs in a barber shop which collects money is not legal..." to run video machines, pool tables, and beauty salons out of barbershops while not enforcing said requirement against vending machines, the selling of hair care products such as shampoo, the selling of home canned foods, and the use of suntan machines in barbershops.

The Board can only enforce the State law concerning barbering. This consists only of the State Statutes and regulations. If the Board wishes to create and implement new regulations for the industry of barbering in South Carolina, it should follow the APA §1-23-110 which requires:

...Prior to the promulgation, amendment, or repeal of any regulation, an agency shall:

1. Give at least 30 days notice of intended action by publication of a notice in the State Register. The notice shall include either the text or a synopsis of the proposed regulation, the statutory authority for its promulgation, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely requests of the agency for advance notice of proposed promulgation of regulations.
2. Afford all interested persons reasonable opportunity to submit data, views or arguments, orally or in writing. Opportunity for oral hearing must be granted if requested by 25 persons, by a governmental subdivision or agency, or by an association having not less than 25 members. The agency shall fully consider all written and oral submissions respecting the proposed regulation.

In addition, §1-23-120 requires that:

...all [proposed new] regulations except those specifically exempted under this article shall be submitted to the General Assembly for review...[and] shall have attached thereto a brief synopsis or analysis of the regulations submitted explaining the content therein and any changes in existing regulations resulting therefrom...

The legal enforceability of Board regulations of "general public applicability" created since the passing and implementation of the APA, but not promulgated by the process specified in the APA, is questionable. In addition, the Board is contravening the intent of the General Assembly by not allowing public comments on said Board "regulations."

By selectively creating and enforcing rules and policies in excess of the statutory authority of the Board, the Board creates a situation where:

1. The Board may have violated the 14th Amendment by treating persons similarly situated differently.
2. The Board has exceeded its statutory authority, circumvented the legislative process and required people to pay money and be examined for a license illegally by issuing a license not authorized by the General Assembly.
3. Board enforcement activities are questionable.
4. The Board's inspection instrument is questionable (see p. 69).
5. The Board restricted trade by not allowing the barber school student to transfer to shop training and by not allowing the barbershop owner to train an on-the-job barber student until his shop was a "Grade A" shop, costing him approximately \$800.
6. The Board has created a barrier to entry and discouraged competition in the barber school business by giving out information on the opening of barber schools only at Board meetings.
7. The Board may have restricted trade.

RECOMMENDATIONS

IF THE GENERAL ASSEMBLY CHOOSES TO REESTABLISH THE BOARD OF BARBER EXAMINERS, THE BOARD SHOULD ENFORCE ONLY THE SOUTH CAROLINA CODE OF LAWS AND STATE REGULATIONS DEALING WITH BARBERING. THE BOARD SHOULD CREATE NEW BARBERING REGULATIONS THROUGH THE PROCESS SPECIFIED IN THE ADMINISTRATIVE PROCEDURES ACT.

FURTHERMORE, IF THE GENERAL ASSEMBLY CHOOSES TO MAINTAIN §40-7-25 OF THE SOUTH CAROLINA CODE OF LAWS, THE BOARD SHOULD DESIST FROM ISSUING A MANICURIST LICENSE.

Attitude on Sanitation Inspection Form

The Board added "attitude" of the shop's owners, managers, and barbers as a judgemental criteria, worth 7 out of a possible 100 points, on its barbershop sanitation inspection reports without promulgating "attitude" as part of State Regulation 17-50, Sanitary Rules Governing Barbers, Barber Shops and Barber Colleges. The Board's sanitation inspection report is made up of a checklist of 16 items. "Attitude" is the only item on the Board's inspection form that is not a direct or indirect requirement of the South

Carolina Code of Laws or State regulations. In addition, the Board has no written criteria for the Board's inspectors to use in grading "attitude."

The Audit Council in its review of the Board could find no reasonable relationship between "attitude" and the sanitation of a barbershop. Out of the ten southeastern states, South Carolina is the only one surveyed which grades attitude when inspecting barbershops; "attitude" is not graded by the Board of Cosmetology during cosmetology salon inspections. When the Board members or its inspectors inspect barbershops, they should only be concerned with 2 matters: (1) is the shop operated in a manner hazardous to the public's health; and (2) is the shop and all the barbers who work in the shop licensed as required by law.

Furthermore, if the Board feels that "attitude" is something that needs to be graded during sanitation inspections, then the Board should have promulgated it as an addition to State Regulation 17-50.

The grading of "attitude" during inspections of barbershops is arbitrary and capricious. It is a subjective item with no defined criteria for judgement. The seven points on the Board's shop inspection checklist give the Board and its inspectors the power in some cases to lower the posted grade of a barbershop one letter grade.

The implementation of the grading of "attitude" by the Board has another effect. In order to keep the total possible points obtainable during an inspection at 100, the

Board lowered the number of points on the inspection form for general "sterilization" from 15 to 8. Thus, the Board lessened the importance of the public health and safety in order to grade "attitude" of the shops' owners, managers, and barbers.

Furthermore, since "attitude" is not based upon a requirement of either the Code or State regulations, the legal validity of the Board's inspection instrument is questionable.

The addition of "attitude" as a judgemental criteria of barbershop inspections by the Board, and the subsequent lessening of the importance of general "sanitation" during such inspections shows a lack of concern on the part of the Board for the health and safety of the public. If barbershop inspections are necessary for the protection of the public (see p. 38), they should be concerned with health and safety issues and the proper licensing of the barbers and barbershops, not the issue of "attitude."

RECOMMENDATION

IF THE GENERAL ASSEMBLY CHOOSES TO
REESTABLISH THE BOARD OF BARBER
EXAMINERS, THE BOARD SHOULD REMOVE
"ATTITUDE" AS AN ITEM TO BE GRADED
DURING SHOP INSPECTIONS.

Part-Time Barber Students

The Board of Barber Examiners illegally allows barber students to go to barber school and some barber students to go through on-the-job training part-time in violation of State Regulation 17-8(a) which states:

Students training in a school or college or under the personal supervision of a registered barber shall be on a five day week basis, eight hours per day for a minimum of thirty-six weeks.

Furthermore, the Board is inconsistent by enforcing Regulation 17-8 with most students who train in a shop, while ignoring its requirements for students who train in barber schools. The Audit Council was informed by the Board and a barber school owner that the Board allows students in barber schools to attend on a part-time basis. The school owner told the Audit Council that he has both a full-time program and a part-time program. However, the Board turned down a request by another barber to train a student in his shop on a part-time basis. The Board has created a double standard with regard to State Regulation 17-8.

While the Board allows barber school students to train on a part-time basis in violation of State Regulation 17-8, it instructs all perspective on-the-job barber students when they appear before the Board that they must train on a full-time basis.

By allowing barber students to train only on a full-time basis, State Regulation 17-8 restricts entry into the hair styling profession. The Board has attempted to

lessen this effect by allowing some students to train on a part-time basis. However, the Board has not uniformly applied this practice to all barber students.

The Audit Council could find no reason to continue the State's requirement that all barber students train on an eight-hour-a-day, five-day-a-week basis. South Carolina is the only southeastern state, of ten surveyed, that requires barber students to train on a full-time basis. With the exception of Kentucky, which requires barber students to train no less than four hours a day, and South Carolina, no southeastern state specifies how many hours a day or week that a barber student must train. In addition, South Carolina itself does not specify how many hours a day or week a cosmetology student must train.

While the Board of Barber Examiners allows some students to illegally train part-time because the full-time requirement is unreasonable, it has not attempted to amend or rescind the regulation to legally allow part-time training. Instead, it has created a double standard by subjectively applying State Regulation 17-8(a) to on-the-job barber training and ignoring the requirement for barber school training.

RECOMMENDATIONS

IF THE GENERAL ASSEMBLY CHOOSES TO
REESTABLISH THE BOARD OF BARBER

EXAMINERS, THE BOARD SHOULD ADMEND STATE
REGULATION 17-8 BY DELETING SUB-SECTION
(A) 'S REQUIREMENT THAT BARBER STUDENTS
TRAIN ON A FIVE-DAY-A-WEEK,
EIGHT-HOUR-A-DAY BASIS.

IF THE BOARD DECIDES NOT TO AMEND STATE
REGULATION 17-8 (A) , IT SHOULD BE
CONSISTENT IN ITS ENFORCEMENT.

Annual Records

The Board of Barber Examiners has not developed an annual record of its licensing proceedings and has not filed this information with the Secretary of State as required by §40-7-80 of the South Carolina Code of Laws. According to the Board's Administrative Assistant, the Board was unaware of this requirement which appears in the Code under the mandates for the Board.

The Board of Barber Examiners is required by §40-7-80 to file annually:

... a record of its proceedings relating to the issuance, refusal, renewal, suspension and revocation of certificates of registration. This record shall also contain the name, place of business and residence of each registered barber and registered apprentice and the date and number of his certificate of registration.

Not only has the Board not filed the information required by §40-7-80, it has not developed it even after

being requested on February 14, 1985 to do so by the Secretary of State.

Good management dictates that the Board develop the required information in order to evaluate its own performance and keep track of problem barbers. Furthermore, by failing to comply with §40-7-80, this information is not easily available to the public or to State agencies such as the Consumer Advocate and protection of the public is lessened.

RECOMMENDATION

IF THE GENERAL ASSEMBLY CHOOSES TO
REESTABLISH THE BOARD OF BARBER
EXAMINERS, THE BOARD OF BARBER EXAMINERS
SHOULD COMPLY WITH §40-7-80 OF THE SOUTH
CAROLINA CODE OF LAWS.

State Regulation 17-30

The Board of Barber Examiners has failed to either enforce or rescind State Regulation 17-30 requiring every barber to obtain a tuberculosis chest X-ray every year in order to renew their license. The Audit Council in its 1979 review of the Board recommended that the Board rescind State Regulation 17-30 since "tuberculosis is no longer a public health threat and the chances are infinitesimal that a barber will transmit this disease to a customer."

The Board's former Chairman told the Audit Council that the Board quit enforcing the requirement of annual chest X-rays because of the Audit Council's 1979 sunset review finding that there was no need for the annual chest X-ray.

If the Board agreed that the annual chest X-ray was no longer needed, then the Board should have rescinded State Regulation 17-30 through the process specified in the APA. The failure of the Board to rescind Regulation 17-30 through the public process required by the APA may have been the cause of some barbers in FY 82-83 unnecessarily spending money to have a chest X-ray done even though the Board no longer required one for relicensure. One barber in July of 1982 wrote to the Board:

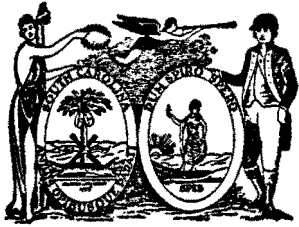
Your office does not notify the license holder of changes in regulations that effect them. I just paid \$69 for a physical to renew my license that is no longer required.

RECOMMENDATION

IF THE GENERAL ASSEMBLY CHOOSES TO
REESTABLISH THE BOARD OF BARBER
EXAMINERS, THE BOARD SHOULD RESCIND
STATE REGULATION 17-30 REQUIRING ANNUAL
CHEST X-RAYS OF LICENSED BARBERS.

APPENDIX

APPENDIX A



**SOUTH CAROLINA
STATE BOARD OF BARBER EXAMINERS**

900 GARLAND STREET

P. O. BOX 11983

PHONE: 758-3356

COLUMBIA, S. C. 29211

BOARD MEMBERS:

HERBERT B. JONES
RUSSELL LOGAN
THELMA J. ROBINSON
WILLIAM L. GILLIARD, SR.
ROBERT R. MARTIN

LISA W. HAWSEY
ADMINISTRATIVE ASSISTANT

July 15, 1985

George L. Schroeder
Director
S.C. Legislative Audit Council
620 Bankers Trust Tower
Columbia, SC 29201

Dear Mr. Schroeder:

If it is satisfactory with your office, we wish to let our Preliminary Comments serve as our Final Comments as a response to the report your office has conducted on this Board.

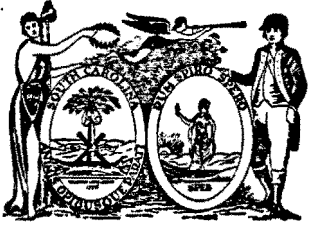
If further information is required, please let us know.

Sincerely,

S.C. STATE BOARD OF BARBER EXAMINERS

Lisa W. Hawsey
Lisa W. Hawsey
Admin. asst.

LWH7



**SOUTH CAROLINA
STATE BOARD OF BARBER EXAMINERS**

900 GARLAND STREET

P. O. BOX 11983

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LISA W. HAWSEY
ADMINISTRATIVE ASSISTANT

June 26, 1985

George L. Schroeder
Director
S.C. Legislative Audit Council
620 Bankers Trust Tower
Columbia, SC 29201

Dear Mr. Schroeder:

This letter is to serve as our preliminary comments regarding the audit report your office conducted on this Board. In making our comments, we have simply referred to the page of the report of which we wish to remark.

Preliminary Comments

Page 25

Responding to the statement that licensing is not justified as an argument for the protection of health, sanitation, etc. - barbers would lose their professional identity.

Page 26

Social and economic interest of an occupation should not be the role of government, but of the Board paid for by its licenses and examinations.

Page 27

Expenditures increased by 40% was due to inflation.

Page 28

Apprenticeship is necessary because it gives those persons who have completed the barber course a chance to learn how to operate a shop from a business standpoint before opening a shop themselves.

Preliminary Comments (Cont.)

Page 28

The licensing of barbers and barber shops is necessary because it streamlines the profession by making sure that qualified persons practice barbering in this state. It also helps to assure the public that qualified persons are serving as barbers.

Page 29 - 31

Exams held two hours later is not feasible because many of the examinees and their models need to go to their jobs as soon as possible after the exam. Holding the exam two hours later would only detain those persons.

Page 31

The Board does purchase as many supplies as possible from General Services, but due to the sometimes delay in delivery of these supplies, we purchase from a private vendor.

Page 32

Purchasing the copier which we now lease has never been explored, since the rental of the copier each month is not a great sum of money. Since we do not exceed the minimum amount of copies per month, the company from which we lease the copier from has reduced the rental rate last year and is going to reduce it even further this coming year.

Page 33 - 35

The pre-sorting of mail would be more trouble than necessary, since we have only one month per year that our mail is quite extensive. Even during that time we may average about 75 - 100 pieces of mail per day. During the rest of the year, we average about 15 - 20 pieces of mail a day.

Page 36

In order to better serve the consumer and the barbers, licensing on an annual basis as we have been doing since the existence of this Board is more desirable. Licensing on a biennial basis would not allow us to serve the consumer or the barber as well.

Preliminary Comments (Cont.)

Page 41

The barber shop in question that was reported as not complying with the sanitary rules and regulations was inspected after a recent Board meeting by the Chairman and one of our inspectors. The report of the inspection was given at the following Board meeting. A member of your staff was present when that report was given.

Page 44

A barber assistant needs to train only six weeks on a student permit before becoming licensed, not six months as indicated in your report.

Page 47

The office rent which we pay each month is \$350.00. When we were looking for rental property almost three years ago, the location we are at presently offered the most reasonable rental rate. Smaller offices in the city limits which we looked at offered exceedingly high rental rates.

All but three barber chairs were donated to this Board by barbers who were proud to donate to their profession. (We have a total of 11 barber chairs in this office.)

Page 50

All Board meetings are held every second Wednesday of each month unless otherwise noted by the Board. Examinees are notified by mail of the scheduling of their examination.

Page 51

The inability to have state laws printed was due to the lack of funds. Copies were furnished for those who requested it.

Page 52

Presently, we do furnish copies of our laws to those requesting it. (It has been printed up in a booklet form.)

Page 55

Complaints are kept on file. All valid complaints are investigated by the inspectors.

Preliminary Comments (Cont.)

Page 57

Since we are audited on a regular basis by the State Auditor's Office, we simply assumed that report was sufficient, since a copy is sent to the Governor's office.

"Attitude" which a barber is graded on when a barber shop is inspected is there for the inspector's protection against physical or verbal abuse.

Page 58

All work of inspectors is not indicated in writing such as: investigations, phone calls, and stake outs. There is at least 10 to 15 hours a week put in on the job without compensation.

Page 61

Leave records are kept on file in this office.

Page 61 - 62

How did your investigation arrive at the conclusion that the inspectors of this office do not work the required 37.5 hours per week?

Page 64

The inspector asked a barber to remove his son from the barber shop because he was an infant being cared for in a crib near his father and mother in the shop during working hours. Our rules and regulations state that a barber shop should not be used for living or sleeping quarters. We found this to be unsanitary to care for an infant while working. Also, the mother of the child did not have a license to practice any type of barbering.

The Board did not direct an inspector to collect a refund for a dissatisfied customer. The Board asked the inspector to speak with the barber about this matter and suggest that he and the customer try to work something out between themselves.

Page 65

The Board has the authority to make some minor rules and regulations.

The Board does have the statutory authority to license manicurists. We do so by issuing them a Manicurist license under the Barber Assistant license.

Preliminary Comments (Cont.)

Page 65-66

Each year a report of license fees, exam fees, and other related information related to the operation of this office is made for the Budget and Control Board. Every state agency can receive a copy of this report. Prior to your request of our making a report to the S.C. Secretary of State, our present staff was totally unaware of such a report.

Page 70

The Board denied a request for a barber to train a student on a part-time basis because the barber was only able to be in the shop a few hours a day for only two days a week and part of that time the barber stated that he would not be able to be in the shop.

Page 72

The sanitary rules and regulations for barber shops is furnished by this office. Each inspector has given a copy to every shop which is to be posted in the shop. These sanitary rules and regulations were approved by the S.C. Dept. of Health and Environmental Control.

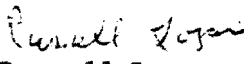
Page 73

The health department sent a written notice to this office informing us that the skin test or blood test for tuberculosis was no longer required. Notice to this was sent out in licenses and by the inspectors on routine shop inspections.

We hope this format was satisfactory. If further clarification is needed, you may contact me at (803) 396-4540.

Sincerely,

S.C. STATE BOARD OF BARBER EXAMINERS


Russell Logan
Chairman

RL/1h

BOARD OF COSMETOLOGY

BACKGROUND AND ORGANIZATION

Background

The practice of cosmetology has been regulated in South Carolina since 1934 with passage of Act 771, establishing the State Board of Cosmetic Examiners. Act 771 has been amended several times by subsequent acts; most recently Act 338 of 1982 renamed the Board the "State Board of Cosmetology."

The Board consists of 5 members, 4 of whom are registered cosmetologists and 1 public member provided for in Act 338 of 1982. By law, the public member may not participate in examinations. A cosmetologist must have practiced cosmetology in the State for at least five years to be eligible for appointment to the Board. Board members may not own any interest in a cosmetology school or any substantial interest in any company which deals in wholesale sales or services to beauty salons. Board members receive \$35 per diem, and subsistence and mileage when transacting Board-related business.

The Board receives advice from the industry through its Advisory Committee which was established by Act 388 of 1982. The Committee consists of six members who are appointed by the Governor. Each of the following organizations recommends one person to the Governor for appointment: South Carolina Registered Cosmetologist Association; South Carolina State Cosmetologist Association; South Carolina

Vocational Directors Association; South Carolina Association of Cosmetology Schools; South Carolina Supply Dealers and the teachers of cosmetology in vocational or private schools. Committee members serve without compensation from the State.

State law defines cosmetology as:

...engaging in any one or a combination of the following practices, when done for compensation either directly or indirectly: arranging, styling, thermal curling, chemical waving, pressing, shampooing, cutting, shaping, chemical bleaching, chemical coloring, chemical relaxing or similar work, upon the hair of any person, or wig or hairpiece of any person, by any means, with hands or mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, make-up, antiseptics, lotions, creams, chemical preparations or otherwise, or by waxing, tweezing, cleansing, stimulation, manipulating, beautifying or similar work, the scalp, face, neck, arms, hands, or by manicuring or pedicuring the nails of any person or similar work.

The duties of the Board fall into five functional areas:

1. Licensing - The Board issues cosmetologist, manicurist, esthetician and teacher licenses. In addition, it licenses cosmetology, manicuring and esthetics schools and salons which comply with standards prescribed by the Board. All licenses are renewed annually, provided practitioners, except teachers, complete six hours of Board-approved continuing education. Teachers are required to complete 15 hours of instruction.
2. Examinations - The Board's licensing examinations consist of both written and practical tests. National standardized written tests are used for all licenses. The national standardized tests are provided and graded by a testing service. The Board develops its own practical examinations. The practical examinations are administered and graded by the Board and additional examiners. Since October 1984, the Board has been

using salon owners who are licensed cosmetologists and meet Board-member eligibility requirements as examiners.

3. Complaints - The Board's Special Investigator receives and investigates complaints filed with the Board. The Board may hold hearings and discipline members of the profession.
4. Enforcement - The Board employs three full-time inspectors who periodically inspect beauty salons for compliance with sanitary rules and regulations. The private and public cosmetology schools and programs are inspected by the Special Investigator. The inspectors also verify that the salons and practitioners are appropriately licensed. Investigations are also conducted of unlicensed practitioners. The Board issues a warning and may initiate prosecution of persons violating provisions of the law.
5. Reciprocity - South Carolina allows reciprocal licensing of out-of-state applicants from 43 states which have similar training requirements and/or which use national standardized examinations.

SUNSET QUESTIONS AND FINDINGS

- (1) DETERMINE THE AMOUNT OF THE INCREASE OR REDUCTION OF COSTS OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

Since the Board of Cosmetology does not regulate fees charged for cosmetology services, it has no direct impact on consumer prices. However, its rules and regulations generate costs to cosmetologists. Such occupational costs include training expenses (includes continuing education and school), examination fees, license renewal fees and costs associated with shops and schools meeting equipment and facility standards. These and other licensing requirements limit entry into the occupation and may reduce competition and, thereby, contribute to increased prices for consumers. The significance of this increase, however, cannot be determined. Also, the Board's existence as a State agency increases indirect governmental costs.

(2) WHAT ECONOMIC, FISCAL AND OTHER IMPACTS WOULD OCCUR IN THE ABSENCE OF THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW?

The termination of the Board of Cosmetology and related cosmetology licensing provisions does not represent a threat to the public health, safety, or welfare. Licensing is not justified as an argument for protection of health, sanitation or possible harm from use of chemical solutions. Existing State agencies can assure present Board responsibilities for handling complaints, sanitation issues and monitoring private cosmetology schools. A competitive marketplace would assure the quality and competence of hairstylists without danger to the public.

The economic impact resulting from the elimination of the Board would exceed \$300,000 annually in fees not collected. The State General Fund would lose approximately \$50,000 to \$100,000 which results from the differences between fees collected and Board expenditures. In addition, deregulation could cause a decrease in the prices of cosmetology services since less government regulation tends to promote competition and possibly lower prices.

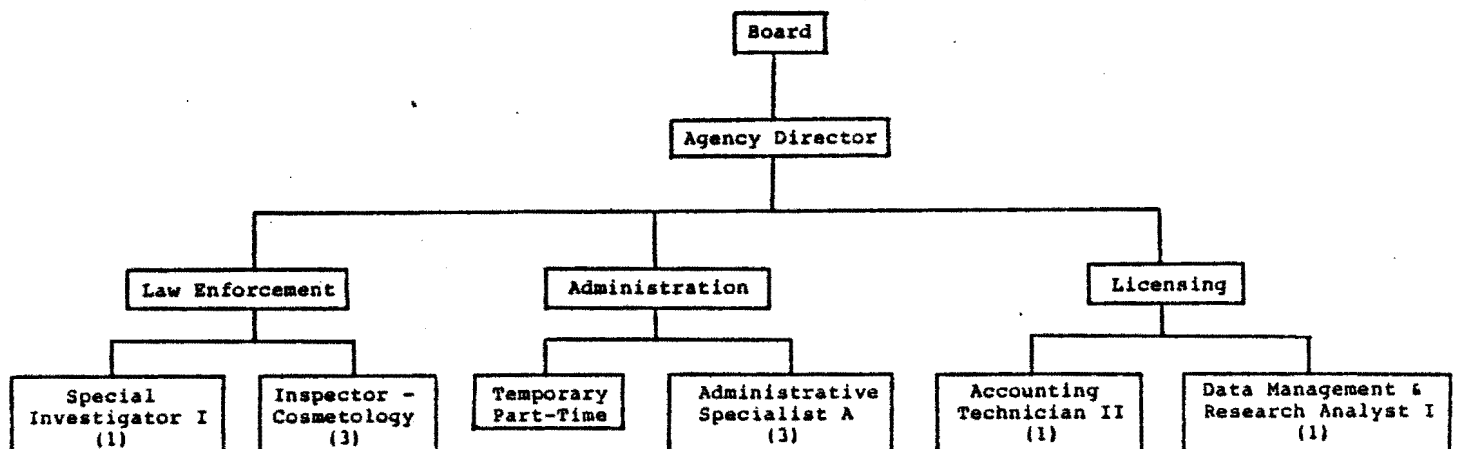
One other impact of the absence of the Board is that cosmetologists would lose the professional enhancement, status and prestige which State regulation

brings. However, the advancement of the social interests of a profession should not be the role of government and could be accomplished by professional and trade associations.

(3) DETERMINE THE OVERALL COSTS, INCLUDING MANPOWER, OF THE AGENCY UNDER REVIEW.

As shown in Table 7, the Board employs 10 full-time employees. The Special Investigator and Data Management and Research Analyst positions were added in FY 82-83 and FY 83-84. The Board has requested funding for an administrative assistant in its FY 85-86 budget request.

TABLE 7
SOUTH CAROLINA STATE BOARD OF COSMETOLOGY
ORGANIZATION CHART



The Board also uses additional examiners who are paid a per diem of \$35 and mileage for days they work for the Board.

As shown in Table 8, the annual license fees in FY 84-85 range from \$10 for an inactive license to \$25 for a cosmetology salon license.

TABLE 8
SOUTH CAROLINA STATE BOARD OF COSMETOLOGY
FEE SCHEDULE

<u>Categories</u>	<u>FY 81-82</u>	<u>FY 82-83</u>	<u>FY 83-84</u>	<u>FY 84-85</u>
<u>Licenses:</u>				
<u>Cosmetologist, Manicurist & Esthetician:</u>				
Examination:				
Junior	\$ 15	\$ -	\$ -	\$ -
Registered	35	35	35	45
Re-notification:				
Junior	3.50	-	-	-
Registered	6.50	10	10	45
Re-Exam:				
Written: Junior	3.50	-	-	-
Registered	6.50	10	10	10
Practical: Junior	3.50	-	-	-
Registered	6.50	10	10	35
Written & Practical: Junior	3.50	-	-	-
Registered	6.50	10	10	45
Reciprocity	35	35	35	45
Renewal:				
Junior (before 3-10)	5	-	-	-
Junior (after 3-10)	10	-	-	-
Registered (before 3-10)	15	15	15	15
Registered (after 3-10)	25	25	25	25
Inactive License	-	-	-	10
<u>Instructors:</u>				
Examination (written)	\$ 25	\$ 25	\$ 25	\$ 25
Examination (practical)	25	25	25	25
Renewal (before 6-30)	10	10	10	10
Renewal (after 6-30)	20	20	20	20
<u>Salons:</u>				
New salon/change of location	\$ 25 @	\$ 25 @	\$ 25 @	\$ 25 @
Change Owner/Name	10 @	10 @	10 @	10 @
Renewal (before 6-30)	10	10	10	10
Renewal (after 6-30)	20	20	20	20
<u>Schools:</u>				
New School/Change of Location	\$100 @	\$100 @	\$100 @	\$100 @
Change Owner/Name	25 @	25 @	25 @	25 @
Renewal	25	25	25	25

Source: South Carolina State Board of Cosmetology.

On an average, from FY 79-80 through FY 83-84, the General Assembly has appropriated back to the Board of Cosmetology 82% of the revenue raised through the Board's licensing and examination functions. However, over the past 2 years, this amount has averaged only 74% of revenues.

From FY 79-80 through FY 83-84, the Board's expenditures increased approximately 40%. Personal services costs accounted for 46% of FY 83-84 expenditures. In FY 83-84, 70% of the Board's other operating expenditures were attributed to 3 categories: (1) 32% (\$37,838) for travel; (2) 28% (\$32,093) for supplies and equipment; and (3) 10% (\$11,760) for rent.

(4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

Inefficiencies are costing the Board of Cosmetology approximately \$121,000 annually. The Audit Council reviewed the operation of the Board of Cosmetology and found several problems that reduce the efficiency of the Board: (1) annual licensing of cosmetologists results in an average loss of \$38,000 a year to the State; (2) salon inspection and licensing are unnecessary and costly; (3) the licensing of manicurists and estheticians is unnecessary; (4) training requirements for licensure are excessive

and not uniformly enforced; (5) the Board's practical exams are not necessary; and (6) the Board's reinstatement fees are punitive and may be excessive.

Administration of Licensing Program

The Board's administration of its licensing program is inefficient and uneconomical. The result is unnecessary expenditures and unrealized additional interest earnings providing a net gain of \$76,000 over a 2-year period.

The Audit Council found that the following practices contribute to inefficiencies in the licensing program:

(1) annual license renewal; (2) uniform license expiration dates; and (3) separate license and renewal application mailings.

Sections 40-13-220 and 40-13-240 of the South Carolina Code of Laws require individual, school and salon licenses issued by the Board to be renewed annually. The Board renews 6 licenses for over 21,500 licensees annually and does not stagger renewals, requiring that all licenses expire on either March 10 or June 30 as designated by the Board. It is also a policy of the Board to mail renewal applications separate from licenses except to instructors and school owners. Additionally, reminder letters and second renewal notices are sent to licensees.

(1) Annual renewal of licenses requires more service, material and staff resources than biennial or less frequent license renewal. Converting from annual to biennial

licensing could decrease supply and services expenditures. Staff time could also be reduced substantially.

Four of the southeastern states, Alabama, Georgia, Florida and Virginia, operate on biennial renewal system. Twenty-four other states require biennial or less frequent license renewal.

The Board could save over \$18,000 on supplies and services alone as well as approximately 1 staff-year during the licensing period by converting to biennial license renewals. Also, biennial license renewal would affect the interest paid to the State. The interest would be paid on 2 years of license fee collections rather than 1 year, resulting in an additional \$33,000 in interest.

(2) The uniform expiration dates now used by the Board increase its inefficiency. An unstaggered distribution of renewals creates peaks in the workload and results in slower turnarounds and inefficient use of staff assigned to manage other functions. Several states' Boards, operating on a biennial and/or staggered license renewal system, have indicated they have experienced significant increases in efficiency and reductions in costs. The effects include reduced workloads, shorter turnarounds, savings in staff and material resources. They also noted they had not experienced any problems with budgeting or threats to the public health and welfare. The State of Ohio estimates it has saved approximately \$50,000 in supplies and services in

a biennium and one-half a staff-year in clerical time under the biennial renewal system.

Further savings could be realized in staff resources if the Board would evenly distribute renewals over a biennium by using a renewal system based on the licensees' birth month or by using a computer generated distribution. An even distribution of renewals eliminates peaks in the workload and allows for more efficient management of the workload. Such a system would eliminate the need for temporary employees during the peak period.

The cost savings (in salaries) of the staff-year now required to administer the present renewal program is over \$14,000. This figure does not include cost or staff-days for temporary employees hired to assist during the peak period. In its FY 85-86 budget request, the Board has requested \$14,794 to hire an administrative assistant. Converting to biennial staggered license renewals could eliminate the need for this position. Table 9 shows the savings which could be realized under a biennial staggered license renewal system.

TABLE 9
ANNUAL COST SAVINGS

<u>Cost Center</u>	<u>Biennial Licensing</u>	<u>Separate Renewal Notices</u>	<u>Second Renewal Notices</u>
Printing	\$ 8,580	\$ 3,485	\$ -
Postage	3,634	3,666	568
Presort	213	215	34
Computer Services	6,450	3,225	-
TOTAL	<u>\$18,877</u>	<u>\$10,591</u>	<u>\$602</u>
 GRAND TOTAL	 <u>\$31,538</u>		

(3) The separate mailings of renewal applications are costly and unnecessary. The application can be made a detachable portion of the license. Then, both the license and the renewal can be mailed at the same time. Other Boards use a combined license renewal application. This makes additional notices unnecessary. It is the licensee's responsibility to renew his/her license if he/she wishes to continue to practice the profession.

This measure could save printing, postage and computer costs, as is demonstrated by the combined school license and renewal applications for schools already in use by the Board which requires the same postage rate as the license without the renewal notice attached. The present rate for mailing the teacher license forms is an additional 9 cents because of the size of the mailing envelope. However, the license/renewal application could be designed so the size would conform to standards for the basic postal rate.

This process would also reduce the likelihood of the renewal application going to incorrect addresses due to change of address. The Board can save over \$10,500 by combining license and renewal applications. An additional \$600 can be saved if the board discontinues mailing second notices (see Table 9).

RECOMMENDATIONS

IF THE GENERAL ASSEMBLY CHOOSES TO REESTABLISH THE BOARD OF COSMETOLOGY, SECTION 40-13-180 OF SOUTH CAROLINA CODE OF LAWS SHOULD BE AMENDED TO REQUIRE BIENNIAL LICENSURE OF LICENSEE REGULATED BY THE BOARD. RENEWALS SHOULD BE STAGGERED OVER THE BIENNIUM.

THE BOARD SHOULD DEVELOP A COMBINED RENEWAL APPLICATION AND LICENSE FOR ALL OF ITS LICENSES.

Licensure of Beauty Salons

The licensure and routine inspection of salons are unnecessary and costly. The Board has not practiced good enforcement in this area, but this situation has not produced a threat to the public's health. The Audit Council review found the Board's sanitation regulations are not

enforced; some regulations are not enforceable; and in one case, regulations have been improperly applied.

Section 40-13-170 of the South Carolina Code of Laws requires licensure of salons. Section 40-13-150(2) states "members of the Board, or their authorized representatives may enter any salon or school at any reasonable time for purposes of inspection." The Board employs 3 full-time inspectors who inspect approximately 4,500 salons on an average of 3 times a year.

In FY 82-83, 23% (over \$56,000) of the agency's budget was spent on inspections. The Board spent 17% (over \$42,000) of its FY 83-84 budget on inspections with only 1 inspector employed only 7 of 12 months. Two of the three inspectors retired during FY 83-84.

The Cosmetology Board does not enforce its sanitation regulations. The Audit Council found the Board generally does not take disciplinary actions against salons that fail sanitation inspections. In a review of Board records, the Council found cases where salons have failed as many as three consecutive inspections without any disciplinary action being taken. Furthermore, the records indicate inspectors actually do not grade some salons which they consider too dirty to be graded. This is in violation of Board of Cosmetology Regulation 35-20 which states:

No salon, school or cosmetology establishment shall be permitted to operate with a grade of less than 70%... Any salon, school or cosmetology establishment which fails to receive a rating of at least 70% shall be

sufficient cause for disciplinary action, or revocation of license, if not corrected by the next inspection.

Some sanitation regulations of the Board are not enforceable. Board regulations require: (1) fresh, clean towels for each customer; (2) combs and brushes to be thoroughly washed and then sanitized after each use; and (3) cosmetologists to wash their hands before starting to work and between clients. These regulations are essentially unenforceable.

Patrons are not always present when an inspector visits a salon. Moreover, there is no way to ensure these rules are being followed between inspections until a consumer complains. Additionally, according to inspectors, salon owners/operators inform each other when the inspectors are working in the area. Practitioners, once informed, may have ample time to correct possible deficiencies.

Regulations have not been properly applied. The Council reviewed 39% (over 2,200) of the inspection reports filed in FY 83-84. It found that the most frequent violation, 78% of the deficiencies in the sample, was dress code. Although Board regulations require salon employees to wear "clean, washable professional type uniforms or jackets," inspectors grade salons on whether or not the employees are uniformly dressed. It has been suggested to the Board that it eliminate dress code as it is difficult to enforce. However, the Board has taken no action to properly apply or rescind the regulation.

Even though the Board has not enforced regulations and has maintained unenforceable regulations, the public's health has not suffered. Only 16 sanitation complaints have been registered with the Board in the past 5 years. This raises the question of whether the licensure and inspection of shops are necessary.

The purpose of the sanitation rules and regulations and the inspections, as stated in the Board's enabling legislation, is "for the protection of the public health." When the Board was created in 1934, the threat of communicable diseases was prevalent. However, there is no evidence to show cosmetology establishments present a threat to the public health. Advances in health care and waste treatment have substantially reduced serious contagious diseases. Inspections could be handled more efficiently on a complaint basis by local health department officials.

The State of Connecticut deregulated its salons in 1980 and its Department of Health Services' Division of Medical Quality Assurance reported no significant health risks have resulted from deregulation of salons. The State of Virginia also inspects its salons on a complaint basis. According to a Virginia Department of Commerce official, no health hazards are known to have developed as a result of this practice.

The Board's ineffective enforcement has brought no serious harm to the public. Evidence suggests the licensure and inspection process is neither relevant or necessary.

RECOMMENDATION

IF THE GENERAL ASSEMBLY CHOOSES TO REESTABLISH THE BOARD OF COSMETOLOGY, SECTION 40-13-170 OF THE SOUTH CAROLINA CODE OF LAWS SHOULD BE AMENDED TO ELIMINATE THE REQUIREMENT FOR SALON LICENSURE. ADDITIONALLY, INSPECTION OF SALONS SHOULD BE DONE ONLY ON A COMPLAINT BASIS BY THE LOCAL HEALTH DEPARTMENTS.

Licensure of Manicurists and Estheticians

The Audit Council reviewed the Board's licensure requirements for manicurists and estheticians (those who perform skin care services) in 1979 and found these requirements to be too restrictive. Until 1983, practitioners performing such services in beauty salons were required to be licensed cosmetologists. Licensure was not required for those not practicing in beauty salons. In 1982, the manicurist and esthetician licenses were established to lessen entry restrictions for persons wanting to practice in beauty salons. However, the Audit Council finds that the licensure of manicurists and estheticians is unnecessary and is not needed to protect the public health or welfare. The examination and excessive training requirements only serve as an unnecessary economic burden on

the practitioner and generate unnecessary administrative costs.

Section 40-13-90 of the South Carolina Code of Laws requires completion of 300 hours of training and passing a licensure examination to become a manicurist. Four hundred fifty hours of training is required for estheticians and passage of licensure examination. The training must be taken at a Board-approved school.

However, persons licensed as cosmetologists may also practice manicuring and esthetics with significantly fewer practice-related hours in manicuring and esthetics than the required hours in the manicuring and esthetics curricula. For example, the cosmetology curriculum specifies only 30 hours of training in facials, skin care and make-up while 225 hours are required by the esthetic curriculum. The manicurists curriculum requires 200 hours in manicuring and the cosmetologists curriculum prescribes only 25 such hours. Cosmetologists have practiced esthetics and manicuring in beauty salons with very limited training. Yet, the Council found no evidence of complaints registered with the Board against licensed or unlicensed persons for damage to the patron's nails or skin.

Eighty-seven percent of those holding manicurists and estheticians licenses were practicing before licensure of these occupations was required. The Department of Consumer Affairs received only 1 complaint of damage against this

group from FY 80-81 through FY 83-84. The manicurist in this case was found not liable.

This measure has resulted in unneeded broadening of the Board's regulatory authority. Eight states do not require licensure of manicuring practitioners and eight other states require 50% or less hours of training than does South Carolina. The State of Florida discontinued licensure of manicurists in 1978.

Licensure restricts the scope of practice and should be used as a remedy of last resort. The Audit Council found no evidence that unlicensed manicurists and estheticians would pose a serious risk to the consumer life, health and safety or economic well-being.

RECOMMENDATION

IF THE GENERAL ASSEMBLY CHOOSES TO
REESTABLISH THE BOARD OF COSMETOLOGY,
SECTION 40-13-90 OF THE SOUTH CAROLINA
CODE OF LAWS SHOULD BE AMENDED TO
ELIMINATE LICENSURE OF MANICURISTS AND
ESTHETICIANS.

Cosmetology Training Requirements

Training requirements for licensure are excessive and are not uniformly enforced by the Board. An analysis of the cosmetology school curriculum prescribed by the Board, which requires 1,500 hours of training before taking the

cosmetology licensure examination, shows that many of the subjects required are not directly related to the ability to perform cosmetology services. The curriculum includes subjects such as Anatomy, Psychology, Personal Hygiene and Salesmanship. Fewer than 1,100 hours of the 1,500-hour curriculum are directly related to the practice of cosmetology.

Additionally, the Board has not enforced the 1,500-hour training requirement in the vocational school cosmetology programs allowing vocational school cosmetology students to receive only approximately 1,000 hours of training in cosmetology. Academic courses, including Social Studies, Shorthand, Journalism, and Apartment Living are accepted to fulfill the 1,500-hour requirement. These courses may be taken and/or required for graduation.

The 1,500-hour requirement may be viewed as excessive because, although it has not been followed by vocational students, there has been no significant effect on students' performance on the Board examinations. The examination failure rate of the vocational school students has averaged 26% over the 4-year period FY 80-81 through FY 83-84, while private school student exam failures averaged about 23% for the same period. The insignificant difference in the failure rates suggests that 1,000 hours or less may be adequate to provide students with requisite knowledge and skills for practice.

Some states require fewer than the 1,500 hours of training for cosmetology licensure. New York and Massachusetts require only 1,000 hours of training. Alabama, Florida and New Jersey require only 1,200 hours.

The purpose of training requirements in the licensure process is to assure a minimum level of practitioner competence. Excessive training requirements tend to restrict individuals' entry into the occupation and the marketplace. The public would not be harmed if training was reduced or modified.

RECOMMENDATION

IF THE GENERAL ASSEMBLY DECIDES TO
REESTABLISH THE BOARD OF COSMETOLOGY,
SECTION 40-13-90 OF THE SOUTH CAROLINA
CODE OF LAWS SHOULD BE AMENDED TO
SUBSTANTIALLY REDUCE THE TRAINING
REQUIREMENTS FOR COSMETOLOGY LICENSURE.

Examination Procedures

The Board's examination procedure is uneconomical and portions of the examination are not needed. This results in unnecessary expenditures totaling over \$10,000 annually.

Section 40-13-110 of the South Carolina Code of Laws authorizes the Board to conduct examinations and prescribe rules for such examinations. Statutes require both written and practical tests.

The Board requires cosmetology license applicants to take a 100-question national standardized written test and a 4-hour, 9-part performance, or practical test. Each of the nine tasks is individually timed. The facial and manicuring sections were added in July 1984. The examinations are generally held monthly in Columbia for private cosmetology school graduates. Vocational students are examined at central sites across the State.

The Board practical exam tests the following services:

1. Comb out (styling)
2. Thermal curl or roller placement
3. Hairshaping (cut)
4. Fingerwaving/pin curls
5. Chemical waving
6. Hair color/lightening
7. Chemical relaxing
8. Facials
9. Manicuring

Only four tasks on the exam may have the potential of serious harm to the public. These are chemical relaxing, chemical waving, hair coloring/lightening, and thermal curling. Actual chemical solutions are never used; cholesterol, balsam, shaving cream or toothpaste is used instead. Further, thermal curling is not demonstrated very often; students prefer to demonstrate roller curling. The public safety aspects of these tasks are also tested on the written examination. The Board has no guarantee that the

procedures demonstrated by applicants will be followed in practice. The Board needs only to ascertain that applicants possess the knowledge to practice safely. If the Board's prescribed curriculum is valid and adequate, sufficient practical training is provided in the cosmetology schools. Furthermore, students receive practical experience while in cosmetology schools by providing cosmetology services to the public.

The States of Connecticut and Oregon do not require practical examinations and have experienced no problems with licensure without a practical examination. Skill testing is a responsibility which is left entirely to the cosmetology schools in the State of Oregon. This has been the practice in Oregon since 1977. Connecticut uses the national standardized written examination as does South Carolina.

Additionally, the Board has not been economical in the administration of the practical examination in that an excessive number of examiners have been used. The Audit Council estimates the Board could save more than \$1,800 per year in Examiners' per diem and subsistence costs.

The practical examination costs over \$10,000 in personal service, travel and contractual service funds. The cost of staff time is not included. The practical examination is unnecessary and represents an excessive taxation of the industry.

RECOMMENDATION

IF THE GENERAL ASSEMBLY CHOOSES TO
REESTABLISH THE BOARD OF COSMETOLOGY,
SECTION 40-13-110 OF THE SOUTH CAROLINA
CODE OF LAWS SHOULD BE AMENDED TO
ELIMINATE PRACTICAL EXAMINATIONS
REQUIREMENT FOR COSMETOLOGY LICENSURE.

Reinstatement Fees

The Board of Cosmetology charges both renewal and late fees (for up to three years) to renew lapsed licenses. This is a punitive policy since fees charged are the same as those charged those licensees who are practicing. Further, no inactive license is available to South Carolina residents, although the Board does issue such a license requiring payment of a \$10 annual fee to out-of-state residents. This license may be renewed annually indefinitely.

Section 40-13-240 of the South Carolina Code of Laws provides for the renewal of an expired license within a 3-year period upon payment of renewal fees and payment of a restoration fee determined by the Board. Board of Cosmetology Regulation 35-23 states:

...Any license expired from one to three years may be reinstated by payment of license fees for every year the license was expired, including the penalty fees for every year the license was expired and proof to the Board of application having completed the requirements for

continuing education during the year the license is reinstated.

...Any inactive license expired from one to three years may be reinstated by payment of inactive license fees for every year the license was expired and proof to the Board of the applicant having completed the requirements during the year the license is to be reinstated.

License renewal fees should cover the cost of services provided. When licensees are not renewing a license there is no direct service provided which could account for this charge being the same as if a license were renewed.

The Board offers the same services to inactive licensees as those who have lapsed licenses but charges the latter more. Consideration has not been given to the actual administrative costs and the primary function of licensure. Requiring the payment of both license renewal and late fees for years during which the license was expired is unreasonable since these are not practicing licensees.

For example, currently persons holding an inactive license for 3 years may activate their license, having paid \$10 for each of the 3 years in license fees, and by paying only the \$15 renewal fee for a total of \$45 and completing the continuing education requirement for that year. In contrast, a practitioner residing in South Carolina who allows his/her license to lapse for 3 years is currently required to pay \$10 for each of the 3 years in late fees, and a \$15 renewal fee for each of the 3 years for a total of

\$75, and completion of the continuing education requirement for that year.

A license may be viewed as a practice permit which certifies that the holder meets prescribed competency requirements. Licensees who are not practicing should not be required to pay back fees since in this case there is no need to establish a measure of competency. Furthermore, the payment of back fees does not affect the licensee's competency during the period of inactivity. Therefore, a flat reasonable restoration fee to cover administrative costs of maintaining records and renewal research should be established.

Such restoration fees are used in several states, including Michigan, Kansas, Kentucky and Minnesota. The State of Minnesota offers an inactive license and requires licensees to take 155 hours of formal training for reactivation.

In effect, the Board's present reinstatement and inactive license fees are punitive and are more favorable, in terms of costs, to Board licensees residing out of the State.

RECOMMENDATION

IF THE GENERAL ASSEMBLY CHOOSES TO
REESTABLISH THE BOARD OF COSMETOLOGY,
THE BOARD SHOULD ESTABLISH A RESTORATION
FEE TO COVER ONLY THE ADMINISTRATIVE

COSTS OF MAINTAINING RECORDS, CONDUCTING
LICENSE RENEWAL RESEARCH AND OTHER
PERTINENT COSTS. THE FEE SHOULD BE
UNIFORMLY APPLIED TO ALL BOARD LICENSEES
IN-STATE OR OUT-OF-STATE.

- (5) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW
HAS ENCOURAGED THE PARTICIPATION OF THE PUBLIC AND, IF
APPLICABLE, THE INDUSTRY IT REGULATES.**

Public representation on the Board is provided by a public member provided for in Act 388 of 1982. The dates of Board meetings are posted on the bulletin board in the Board office. Beyond this, little else is done to encourage participation from the public.

The Board's contact with the public is limited to receiving and investigating complaints. However, a significant number of complaints registered with the Board are filed by its own licensees. Additionally, the Board's failure to follow proper rule making procedures has in effect limited public participation (see p. 113).

Further participation from the public may be encouraged by announcing Board meetings through the media.

The Board receives input from the industry through its Advisory Committee which is composed of

representatives from industry trade associations. The associations and licensees are involved in the Board's operations to the extent that they provide services, e.g., examiners and continuing education providers.

(6) DETERMINE THE EXTENT TO WHICH THE AGENCY DUPLICATES THE SERVICES, FUNCTIONS AND PROGRAMS ADMINISTERED BY ANY OTHER STATE, FEDERAL OR OTHER AGENCY OR ENTITY.

Many of the functions of the Board duplicate the programs or responsibilities of other State agencies. The Board's regulation of hair care is duplicative of the regulation of the industry by the Board of Barber Examiners (see p. 13). Through local health departments, the Department of Health and Environmental Control maintains oversight of sanitation standards, as does the Board; the Department of Consumer Affairs has responsibility for handling consumer complaints.

The State Department of Education, through its Office of Vocational Education and its State Approving Section, provides similar regulation of private trade schools as the Board does in its regulation of cosmetology schools. Section 59-59-20 of the South Carolina Code of Laws exempts schools which are regulated and licensed under an occupational licensing act of the State from oversight under the Proprietary School Act. If the Board is dissolved, regulation of

cosmetology schools would fall within the State Approving Section's authority.

(7) EVALUATE THE EFFICIENCY WITH WHICH FORMAL PUBLIC COMPLAINTS FILED WITH THE AGENCY CONCERNING PERSONS OR INDUSTRIES SUBJECT TO THE REGULATION AND ADMINISTRATION OF THE AGENCY UNDER REVIEW HAVE BEEN PROCESSED.

A review of the Board of Cosmetology complaint files showed that complaint records are not adequately maintained. The Board does not maintain a complaint log. To compile summary or statistical data, all files must be reviewed. The files are not maintained by fiscal year.

Additionally, the Board improperly classifies complaints. The Board maintains records on general, salon and school complaints. Within the general file, complaints registered by licensees regarding the practice of unlicensed persons are classified as consumer complaints. According to Board records approximately 55 (11%) of 484 complaints registered with the Board in the last 4 years were related to consumer dissatisfaction with cosmetology services or sanitary complaints. Twenty-three percent of these complaints were registered by its licensees and concerned unlicensed practitioners. The complaints are not coded to indicate the nature of the complaint or

sequence. According to Board staff, the Board did not have enough staff to adequately handle complaints prior to the hiring of the Special Investigator.

Without an adequate record-keeping system, the Board cannot analyze the number and types of complaints received without time-consuming review of each record.

Improper classification of complaints can contribute to misleading and inaccurate information. During the course of the audit, the Board changed its filing system and no longer classifies licensee complaints as consumer complaints.

RECOMMENDATIONS

IF THE GENERAL ASSEMBLY CHOOSES TO
REESTABLISH THE BOARD OF COSMETOLOGY,
THE BOARD SHOULD DEVELOP AND USE:

(1) A CENTRAL COMPLAINT LOG DOCUMENTING
THE NATURE OF COMPLAINT, DATE OF
COMPLAINT AND MEANS OF CONTACT, AND
ACTION TAKEN BY THE BOARD; AND

(2) WRITTEN POLICIES AND PROCEDURES FOR
THE ASSIGNMENT, INVESTIGATION AND
RESOLUTION OF COMPLAINTS.

(8) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS COMPLIED WITH ALL APPLICABLE STATE, FEDERAL AND LOCAL STATUTES AND REGULATIONS.

There are no federal regulations governing cosmetology. The Audit Council reviewed the Board's compliance with applicable State regulations and found instances where the Board has not complied with the Administrative Procedures Act: (1) fee charges were made without legislative approval; and (2) continuing education requirements were implemented without legislative approval.

Procedures for Establishing Fees

The Board of Cosmetology implemented fee changes without promulgating new regulations establishing such fees as required by Article I, Chapter 23 of the South Carolina Code of Laws. In doing this, the Board has excluded both the Legislature and the public from the review process. Neither the State Statutes nor rules and regulations of the Board contain the current schedule of fees.

The Board did not follow prescribed procedures of the Administrative Procedures Act (APA) before implementing fee changes. Examination, renotification and reciprocity fees were increased effective October 1984. The Board filed notice of proposed regulations in December 1984, after implementing the changes; however, no further action has

been taken based on legal advice to the Board indicating the promulgation of new regulations to increase Boards fees is not required.

According to legal advice provided the Audit Council, there is no provision in the Board's law which excludes it from requirements of the Administrative Procedures Act. Further, the exclusion of rate making from APA requirements is not construed as a broad or general application and thus this exclusion is not applicable to the Board's fee changes.

Section 1-23-40 of the APA requires that:

There shall be filed with the
Legislative Council and published in the
State Register:

- 1) All regulations promulgated or proposed to be promulgated by state agencies which have general public applicability and legal effect, including all those which include penalty provision. Provided, however, that text as finally promulgated shall not be published in the State Register until such regulations have been approved by the General Assembly...

Additionally, Section 1-23-10(4) defines regulation as:

...each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency...
[Emphasis Added].

By not following the procedures of the APA, the Board has implemented a fee increase without the effect of law and public or General Assembly review of the need or reasonableness of such an increase.

Some states also have other provisions in their laws which affect their Boards' rate making authority. For example, the Virginia Board of Cosmetology is limited to increasing or decreasing fees only when revenues are 10% lesser or greater than expenditures. Kansas requires its Board to decrease fees whenever the amount of fees collected are in excess of the amount necessary. Minimum and maximum fee limits are set by State Statute. Arizona and Wisconsin limit revenues going to the General Fund to 10% of revenue collections.

The license and examination fees collected by the Board have exceeded Board expenditures by over 40% in both FY 82-83 and FY 83-84. The lack of review does not encourage efficiency as the Board may increase fees at its discretion without regard to other alternatives.

RECOMMENDATION

IF THE GENERAL ASSEMBLY CHOOSES TO
REESTABLISH THE BOARD OF COSMETOLOGY,
THE BOARD SHOULD ADHERE TO THE
PROCEDURES AND REQUIREMENTS OF THE
ADMINISTRATIVE PROCEDURES ACT.

Implementation of Continuing Education Requirement

The Board of Cosmetology implemented continuing education requirements it established prior to following proper rule making procedures set forth in Article I,

Chapter 23 of Title I, South Carolina Code of Laws. Also, licensees affected by this requirement were not given a reasonable amount of time to meet the requirement.

Section 40-13-240 of South Carolina Code of Laws (Supp. 1984) authorized the Board to require continuing education for renewal of individual licenses. The Board of Cosmetology implemented a 6-hour continuing education requirement in August 1984 without public or legislative review. Initially, the Board allowed licensees only 4 months, September 1984 through December 1984, to complete the requirement. The deadline was later extended through February 1985 at the request of the House Medical, Military, Public and Municipal Affairs Committee following inquiries from Board licensees and members of the General Assembly.

Section 1-23-40 requires that:

There shall be filed with the
Legislative Council and published in the
State Register:

1. All regulations promulgated or proposed to be promulgated by state agencies which have general public applicability and legal effect, including all those which include penalty provisions. Provided, however, that the text of regulations as finally promulgated by an agency shall not be published in the State Register until such regulations have been approved by the General Assembly...

Section 1-23-10(4) defines regulation as:

...each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency... [Emphasis Added]

The Board did not follow this procedure prior to implementing this requirement. The Board filed the notice of proposed regulation in December 1984, over 3 months following its implementation. There was no action from the General Assembly and the regulation shall become effective upon publication in the State Register on June 28, 1985.

Furthermore, the Board did not allow licensees reasonable time to meet the new requirement. Other State Cosmetology Boards who require continuing education for license renewal allow licensees at least 12 months to meet their requirement. The Board's new regulation also allows a 12-month period.

By not following proper rule making procedure in 1984, the Board implemented requirements without opportunity for public or General Assembly review. These requirements did not have the effect of law at that time. Also, the Board has not planned adequately and neglected to give reasonable consideration to licensees when it only allowed them seven months to complete the continuing education requirements.

RECOMMENDATION

IF THE GENERAL ASSEMBLY CHOOSES TO REESTABLISH THE BOARD OF COSMETOLOGY, THE BOARD SHOULD ADHERE TO PROCEDURES AND REQUIREMENTS OF THE ADMINISTRATIVE PROCEDURES ACT. IT SHOULD ALSO GIVE REASONABLE CONSIDERATION TO LICENSEES

WHEN IMPOSING TIME LIMITATIONS FOR
MEETING BOARD REQUIREMENTS.

APPENDIX



**South Carolina
State Board of Cosmetology**

1209 BLANDING STREET
Columbia, S.C. 29201
DORIS BRANTLEY, EXECUTIVE SECRETARY
758-3371

BOARD MEMBERS
RUBY FOWLER
CHAIRMAN
CLINTON
DAVID BAGWELL
VICE-CHAIRMAN
HILTON HEAD

BOARD MEMBERS
VIRGINIA A. RUSHING
ESTILL
JACQUIE CORLEY
COLUMBIA
MARALINE CLARK
ROCK HILL

**SOUTH CAROLINA STATE BOARD OF COSMETOLOGY
RESPONSE TO
LEGISLATIVE AUDIT COUNCIL'S REPORT
AUGUST 9, 1985**

The State Board of Cosmetology and it's Advisory Committee have reviewed the report of the Legislative Audit Council entitled "State Board of Cosmetology". The Cosmetology Board is Composed of five gubernatorial appointees - four cosmetologists working full time in their profession and one member representing the consumer public.

Although the Legislative Audit Council report is fifty-four pages long and required over six months to prepare, the following limitations were imposed on this Board by the Legislative Audit Council:

1. Response must be received by the end of seven working days.
2. Any Legal advice to this Board in the preparation of our response was denied by the Legislative Audit Council; although Legal Council is provided to this Board by the State Attorney General's office.
3. A ten page maximum response was imposed due to the cost of duplication. Given the above limitations, we will respond to each recommendation contained in the report.

Unnumbered Recommendation on page 12 -

The regulation of the profession of hair styling is unnecessary. The General Assembly should consider dissolving the Board of Cosmetology, the Board of Barber Examiners and eliminating the State's regulation of the industry.

The Board and our Advisory Committee strongly disagree with this conclusion for the following reasons:

1. Acceptance of this recommendation would not eliminate the State's

regulation of the industry. Instead the regulation of the industry would be spread throughout four agencies - The State Department of Education, Department of Health and Environmental Control, Local Health Departments and the Office of Consumer Affairs. Rather than having a centralized regulating authority which operates with a broad overview of the entire profession, regulating would continue but in a fragmented, unorganized manner.

2. The Legislative Audit Council fails to address itself to the funding of these four agencies in order to accept this additional work load. If all the Legislative Audit Council's recommendations are accepted, the following funds would be lost to the State's General Fund.

Based On Income - 1984-1985

a. Eliminating Salon Licenses	\$58,735.00
b. Eliminating School Licenses	1,575.00
c. Eliminating Professional License Fees	246,855.00
d. Eliminating Examination Fees	<u>74,440.00</u>
Total Eliminated	\$381,595.00

Funds would have to be generated from some other source in order for these four agencies to assume these additional responsibilities.

3. South Carolina has reciprocity with forty-three states and the deregulation would seriously harm the free flow of the job force into other states. South Carolina citizens would face serious hardships when moving from state to state and their right to work in their chosen profession would be seriously impaired, thereby taking away their ability to earn a livelihood.

4. The general fund would lose between \$50,000 and \$100,000 per year with the acceptance of this recommendation. Since 1976 when the Board's funds were integrated into the State's General Fund, the Board has generated in excess of three quarters of a million dollars (excess of income over expenses) which has gone into the State's General Fund. This source of revenue would be eliminated.

5. The General Assembly owes the public a guarantee that those persons who in the performance of their profession, actually touch the consumer and chemically alter a portion of their body has attained at least a minimum degree of proficiency in their craft.

6. The Legislative Audit Council admits on page 104, that five tasks

performed by cosmetologists have the potential of serious harm to the public. There are also dangers inherent in many of the instruments used in a cosmetology salon as well as in the chemical preparations, e.g. hair shapers (straight razors), shears, and manicuring implements. The need for licensure is dictated by the potential dangers inherent in the use of both chemicals and implements by unskilled and untrained persons.

7. The deterrent factor of unannounced inspections of salons and schools has drastically reduced the complaints on sanitation from the general public.

8. Deregulation of the industry would result in a price increase to the consumer. For example, the cost of Malpractice Insurance, likely to be passed on to the consumer, would skyrocket if indeed it were available to all. Currently you must be licensed by the State and work in a licensed salon in order to obtain Malpractice Insurance. Malpractice Insurance companies admit that the licensing process, e.g. (training, examinations, licensing by the State, the deterrent of unannounced sanitary inspections), has kept the cost of Malpractice Insurance to a minimum, therefore directly reducing the cost to the consumer and the protection of the consumer in the event of personal injury or harm is assured.

9. The industry should be complimented in that no serious harm to consumers has been proven. The training required, the examinations taken, licenses issued and then unannounced inspections proves that the present system works and therefore should not be eliminated.

Unnumbered Recommendation pages 18 and 19:

If the General Assembly decides that continued State regulation of Hairstyling is needed, the General Assembly should consider dissolving the Board of Barber Examiners and the Board of Cosmetology and creating a new Board of Hairstyling.

If the General Assembly chooses to create a singular Board to regulate Hairstylists, the Audit Council recommends:

(1) The new Board should issue only one practitioner license with licensees being allowed to choose whether the title of licensed barber or licensed cosmetologist, or both appear upon their license:

(2) The Board should be composed of five members four hairstylists and one public member, with the first Board being composed of the present

chairman and vice chairman of both the Board of Barber Examiners and the Board of Cosmetology and one public member; and

(3) The statutes creating the new Board should allow hairstyling students to train in shops as well as in Hairstyling schools as is presently the case with the State Barbering Statutes.

The Board and the Advisory Committee prefer separate Boards to regulate barbering and cosmetology. Since 1934, the Boards have been separate and that system works.

In the event, the General Assembly chooses to consolidate the Boards this would be our position.

Historically Barbering and Cosmetology have been separate professions. With the passage of Senate Bill 346, as ammended, by the 1985 Legislature giving the Barbers the right for the first time to perform cosmetological chemical services, this historical difference no longer exists. Barbering is now redefined in the South Carolina Statutes to include these cosmetological functions. Therefore, the Board and the Advisory Committee can see no reason why the Barber Board's functions cannot be integrated with those presently being performed by the Cosmetology Board. We would further agree that this consolidated Board be renamed to more adequately reflect it's new responsibilities.

This consolidation issue is far too complex to adequately address in this report due to the time limitation and page limitation imposed by the Legislative Audit Council; however, we will attempt to present a broad overview.

We would recommend the following licenses to be issued: Cosmetologist, Barber, Manicurist, Esthetician, Master Barber, Master Cosmetologist, Instructors licensing for all areas, with appropriate requirements for each.

The makeup of a state regulatory agency should reflect, in numbers, those who are regulated. There are approximately 15,000 currently licensed cosmetologists, 3,500 currently licensed barbers, seventy-five currently licensed manicurists and sixty-three currently licensed estheticians. Therefore, the newly formed board would fairly reflect the one person one vote theory if it were apportioned on the same principal as the Senate and the House of Representatives. To fairly represent the industry, it should be composed of three Cosmetologists, one Barber and one member of the consumer public.

As there are only eight barbering schools, In-Salon Training could be maintained for barbering; however, there are seventy-seven schools of cosmetology

in South Carolina (including thirty-five vocational schools supported by the State) and this would offer ample opportunity to acquire a cosmetologist license with no interference or hindrance in entering the profession.

Unnumbered Recommendation Page 95

If the General Assembly chooses to reestablish the Board of Cosmetology, Section 40-13-180 of the S.C. Code of Laws should be amended to require Biennial licensure of licensee regulated by the Board.

Renewals should be staggered over the biennium.

The Board should develop a combined renewal application and license for all of it's licenses.

While the Board of Cosmetology is not experiencing any difficulties with it's present system of annual license renewal, the Legislative Audit Council report recommends a biennial renewal system as a more economical and efficient means of operation.

The Board of Cosmetology employed only one part time person for a period of three weeks during it's so called "peak" renewal period of relicensure for some 15,000 individuals in 1985.

The State is presently operating on an annual budget and we foresee difficulties as the only state licensing agency on a system of biennial licenses and an annual budget. As the second largest licensing agency in the State, this change would affect over 15,000 citizens and should be given more study than the seven day limitation for a response allows. The Board of Accountancy attempted a biennial licensure process but reverted back to an annual license renewal.

The Board agrees with the Legislative Audit Council and can implement the recommendation of incorporating a license renewal application with the license for all our licensees. However, this will entail redesigning our computer forms and system, resulting in additional initial costs.

Unnumbered Recommendation on Page 99

If the General Assembly chooses to reestablish the Board of Cosmetology Section 40-13-170 of

the South Carolina Code of laws should be amended to eliminate the requirement for salon licensure. Additionally, inspections of salons should be done only on a complaint basis by the local health department.

The Board and our Advisory Committee strongly disagree with this recommendation.

Although basic hygiene should be common knowledge, practices insuring a clean and healthy business site should be the norm, these practices are all too often ignored. In a business dealing with not only dangerous chemicals, but also with areas of the body which potentially carry germs, cleanliness and caution are mandatory. Unless these regulations are enforced, they tend to be ignored. (An example is a filling station restroom which is frequently discouraging in terms of cleanliness.) Although it might seem that an improperly maintained salon would be apparent to the public, this is not the case since the transgressions are not always visible to an untrained observer. Specific criteria have been developed for Inspectors. The only method of maintaining proper hygienic standards is the utilization of frequent and unannounced inspections. The fact that these regulations and inspections appear to be unnecessary could well be that they are having the intended result.

The inspections are funded through the licensing fees and licensing salons offer identification of all salons in the State operating according to the Statutes, therefore, the Board and the Advisory Committee disagree with this recommendation.

Unnumbered Recommendation Page 101

If the General Assembly chooses to reestablish the Board of Cosmetology, Section 40-13-90 should be amended to eliminate licensure of manicurists and estheticians.

The Board and its Advisory Committee disagree. Prior to 1982, a full cosmetology license was required in order to perform manicure and esthetics services in the salon.

Manicure and Esthetics licenses were instituted by the Legislature as a result of the Legislative Audit Council review in 1979 which stated in part:

"The mandate to hire only licensed cosmetologists prevents individuals from finding employment and could increase the expenses of a beauty

salon which may result in higher prices to the public."

We agree with the Legislative Audit Council report in 1979.

Unnumbered Recommendation Page 103

If the General Assembly decides to reestablish the Board of Cosmetology, Section 40-13-90 of the S.C. Code of Laws should be amended to substantially reduce the training requirements for cosmetology license.

The Board and it's Advisory Committee disagree with reducing the number of hours of training.

One basis for reciprocity is the number of hours required for training. Reducing this number of hours would seriously reduce those State willing to accept South Carolina licenses, thereby limiting the free flow of the work force and directly affecting our right to work in other states. South Carolina has many Federal Facilities located in our State. Those wives and/or husbands who are licensed under reduced hours requirements might find it difficult to work when transferred.

Fifteen hundred hours is the national average for licensure in this profession. It is definitely needed in order to adequately train a cosmetologist to assure the public that not only are they safe from physical harm, but also the practitioner is adequately trained in the styling process.

In order to encompass all of the facets of cosmetological services, a minimum of fifteen hundred hours is required.

Unnumbered Recommendation Page 106

If the General Assembly chooses to reestablish the Board of Cosmetology, Section 40-13-110 should be amended to eliminate practical examination requirements for cosmetology licensure.

The Board and the Advisory Committee strongly disagree with this recommendation to eliminate the practical exam.

Because the curriculum is valid and adequate, it does not necessarily follow that sufficient practical training is provided in the cosmetology schools as evidenced by the failure rate of those taking the exam (Private schools

-23% - Vocational schools - 27%). Without the examination, one quarter of those now practicing would have been allowed to practice their profession on the general public when they could not even demonstrate the minimum degree of proficiency required to pass the exam.

The product of a school is the student. The eventual consumer of the product of the schools is the cosmetology salon owner who must hire the product. A broad cross section of salon owners with over five years experience from throughout the State are now examining a student's proficiency to enter the marketplace.

It has been proven that tasks left off the examination are skimmed over by some schools, if these tasks are taught at all. The elimination of the exam would not ensure the valid curriculum is being taught and sufficient practical training is provided. Only through a practical examination by the user of the product can the public be adequately protected and ensured that those people who touch their bodies in the performance of their profession have met the test of minimal degree of proficiency.

The theory "Let the consumer beware" works in some industries, however, we feel the Legislature owes the general public some assurance that Cosmetologists are competent to use the instruments and chemicals required in the performance of their profession, e.g. a practical examination. Judgement by a jury of your peers is a standard practice in our democracy. The necessity of an informed peer review is evidenced in all professions, e.g. Attorneys determine proficiency in bar examinations, Accountants determine proficiency in accountancy examinations, etc.

Unnumbered Recommendation Pages 108 and 109

If the General Assembly chooses to reestablish the Board of Cosmetology, the Board should establish a restoration fee to cover only the administrative cost of maintaining records, conducting licenses renewal research and other pertinent costs. The fee should be uniformly applied to all Board licensees in State or out of State.

The Board agrees and can implement this recommendation.

Unnumbered Recommendation Page 112

If the General Assembly chooses to reestablish the Board of Cosmetology, the Board should develop

and use:

(1) A Central complaint log documenting the nature of complaint, date of complaint and means of contact, and action taken by the Board.

(2) Written policies and procedures for the assignment, investigation and resolution of complaints.

The Board agrees and can implement this recommendation.

Unnumbered Recommendation Page 115

If the General Assembly chooses to reestablish the Board of Cosmetology, the Board should adhere to the procedures and requirements of the Administrative Procedures Act.

Prior to implementation of the fee increases referred to in the report, the Cosmetology Board consulted with the Attorney General's office for their best legal opinion. The opinion was received in a letter dated January 21, 1985. The Board followed the Attorney General's advice.

By virtue of the Legislative Audit Council report, we are now advised that their staff counsel has rendered an opinion contrary to the instructions given to us by the Attorney General.

The Board felt inadequate to interpret the conflicting opinions and fully intended to seek additional legal advice for this report but was precluded from this course by the denial of the Legislative Audit Council of this Board seeking legal advice prior to the preparation of this response.

Unnumbered Recommendation Pages 117 and 118

If the General Assembly chooses to reestablish the Board of Cosmetology, the Board should adhere to procedures and requirements of the Administrative Procedures Act. It should also give reasonable consideration to licensees when imposing time limitation for meeting Board requirements.

The Legislative Audit Council report recommends that the Board of Cosmetology adhere to the procedures and requirements of the Administrative Procedures Act. The Legislative Audit Council refers specifically to the fact that the Board implemented it's continuing education requirements prior to the

approval process through the Administrative Procedures Act.

The law requiring continuing education requirements for renewal of licensure was passed by the General Assembly in June 1982.

Setting continuing education requirements for nearly 16,000 licensees proved to be a mammoth undertaking and was nearly two years in the making.

Rather than wait another whole year to implement, the Board considered implementation by emergency regulations. Members of the Legislature and key personnel with the Budget and Control Board advised the Board against this measure.

Based on this advice, the Board proceeded to begin with the actual process in September and continuing through March 1985, some 13,000 licensees went through the continuing education programs with no apparent difficulty.

The Board and the Advisory Committee do not agree with the Legislative Audit Council statement that licensees were not given a reasonable amount of time to meet the initial requirement.

CONCLUSION:

This response is based on the combined experience of the State Board of Cosmetology and it's six member Advisory Committee.

No State at this point has abolished the Boards in their entirety. We are certain that the Legislature after review, will not allow the progress made to date in South Carolina to deteriorate into the condition of the 1930's which mandated State Regulatory Control.

STATE BOARD OF COSMETOLOGY

Maraline Clark,
Virginia Rushing,
Jacquie Corley,
David Bagwell, Vice Chairman
Ruby Fowler, Chairman

ADVISORY COMMITTEE

J.P. Camp
Dorothy Augustus
Chris T. Logan
J. Mags McCulloch
James Leone
Jack Humphries

BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS

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INTRODUCTION: REORGANIZATION

The Audit Council finds that reorganization of the State licensing program for nursing home administrators under the Department of Health and Environmental Control (DHEC) would be the most efficient and effective way of ensuring that the program accomplish its mandates. This reorganization would also provide the program with access to greater information regarding nursing home administrators.

The Board of Examiners for Nursing Home Administrators has not used information maintained by DHEC which would aid in the relicensure process and in monitoring nursing home administrators' performance. The two agencies' monitoring functions are strongly related, even to the point of having the Director of DHEC's Division of Licensure and Certification on the Board. However, the Board has not solicited pertinent information from DHEC regarding matters that affect the health and safety of nursing home patients. As a result, DHEC has referred only two complaints to the Board in the past five years, though a review of DHEC's certification files showed several complaints that should have been brought to the Board's attention (see p. 158). This lack of communication from DHEC to the Board impairs the Board's ability to protect the public from incompetent or negligent administrators.

The State licensing program for nursing home administrators is at least partially responsible for

ensuring that DHEC's nursing home licensure requirements are being met by the administrators. The Board examines applicants on DHEC's facility licensure rules and regulations regarding the delivery of nursing home services. In addition, the agency or board which operates the licensing program has the statutory authority to discipline a licensee for incompetence, which could include an administrator's negligence or incompetence in carrying out DHEC's requirements. Locating the licensing program under DHEC would consolidate the Board's functions and DHEC's functions, thereby putting the licensing program in a better position to evaluate the effectiveness of the administrators.

The Audit Council review shows the Board to be ineffectual in the complaints area as well as other important areas such as continuing education. It is, therefore, concluded that the State licensing program for nursing home administrators could provide more effective monitoring of its licensees and more adequate protection of the public health and welfare if placed under the Department of Health and Environmental Control.

RECOMMENDATION

THE GENERAL ASSEMBLY SHOULD CONSIDER
REORGANIZING THE STATE LICENSING PROGRAM
FOR NURSING HOME ADMINISTRATORS UNDER
THE DEPARTMENT OF HEALTH AND
ENVIRONMENTAL CONTROL.

BACKGROUND AND FEDERAL ROLE

Background

The Board of Examiners for Nursing Home Administrators was created in 1970 by Act 984. In 1967, Congress amended the Social Security Act to require states to license nursing home administrators in order to qualify for federal matching funds under the Medicaid program. Studies had disclosed widespread abuses in the operation of nursing homes including unsanitary conditions, negligence leading to death or injury, reprisals against complainants, and excessive profit making by owners and administrators. The amendments were designed to strengthen state enforcement procedures and to assure quality care for public assistance recipients. Mandatory state licensing of nursing home administrators was seen as one means of alleviating the problems since the administrator is a key person in assuring high-quality nursing home care.

Title 42 Code of Federal Regulations §431.705 requires licensing to be done by the state agency responsible for licensing practitioners under the "healing arts act" of the state, or by a state licensing board. If a board is responsible for the licensing, it must be composed of persons representing professions and institutions concerned with the care and treatment of chronically ill or infirm elderly patients.

Section 40-35-10 et. seq. of the South Carolina Code of Laws governs the Board of Examiners for Nursing Home Administrators. Section 40-35-20 (Supp. 1984) provides that the Board consist of 9 members:

- Three qualified nursing home administrators;
- One qualified hospital administrator;
- One M.D. or nurse educator;
- One public member;
- Commissioner of DSS or his designee;
- Commissioner of DHEC or his designee; and
- Director of the Commission on Aging or his designee.

Board members are appointed by the Governor for three-year terms. Membership is limited to no more than two full, consecutive terms. The Board is required to meet at least twice a year.

As of January 1, 1985, there were 268 individuals licensed as nursing home administrators by the State of South Carolina. In February 1985, there were 214 Medicaid-funded nursing homes in South Carolina, providing 14,704 beds. These include both skilled nursing facilities (SNFs) and intermediate care facilities (ICFs). They also include certain facilities within the Department of Mental Retardation and the Department of Mental Health, and long-term care facilities within hospitals.

Nursing homes are licensed and certified by the Department of Health and Environmental Control (DHEC). Licensing inspections are conducted yearly to comply with

State Regulations 61-14 for ICFs and 61-17 for SNFs so that the facility and its patients can qualify for federal Medicaid funding.

The licensure and certification processes include inspection of the physical facility, verification of records concerning the level of patient care, evaluation of administration, and the measurement of compliance with applicable laws and regulations pertaining to the facility itself.

Section 40-35-90 directs the Board of Examiners for Nursing Home Administrators to develop and enforce standards for individual licensure, including examination and investigation. The Board is authorized to revoke or suspend licenses, as outlined by §40-35-130. Licensees must receive 40 hours of Board-approved continuing education biennially in order to be relicensed. The Board is mandated to evaluate and investigate complaints. Additionally, complaint information is to be used for decisions on revocation or suspension of licenses and for assessing the qualifications for relicensure of administrators, as outlined in §40-35-90(f) (Supp. 1984).

The Federal Role

Since state licensing of nursing home administrators is required by the federal government in order to qualify for federal matching funds under Medicaid, it is imperative that federal laws and regulations be followed closely in the

State Statutes and in the functioning of the State licensing program. The most recent federal regulations governing state programs for licensing nursing home administrators are found in Title 42 Code of Federal Regulations §431.700 to §431.715.

These regulations direct the state licensing program to:

- Provide that only nursing homes supervised by a licensed administrator may operate in the state (§431.703).

The state agency or board must perform the following functions:

1. Develop, impose and enforce standards that must be met by individuals in order to be licensed as a nursing home administrator (§431.707).
2. Develop and apply appropriate procedures and techniques, including examinations and investigations, for determining if a person meets the licensing standards (§431.708).
3. Issue licenses to persons who meet the agency's or board's standards and revoke or suspend a license if the the person substantially fails to meet standards (§431.709).
4. Issue one provisional license, for a single period not to exceed six months (§431.710).
5. Establish and carry out procedures to ensure that licensed administrators comply with standards (§431.711).
6. Investigate and act on all complaints it receives of violations of standards (§431.712).
7. Conduct a continuing study of nursing homes and administrators within the state to improve licensing standards; and the procedures and methods for enforcing the standards (§431.713).

SUNSET QUESTIONS AND FINDINGS

Act 608 of 1978, known as the Sunset Law, contains 8 issues which must be addressed in the review of each agency. These requirements encompass the areas of fiscal and economic impact of an agency and other relevant issues which will help determine the termination, continuation, or reestablishment of the agency. This study will also provide the General Assembly an indication of the agency's public responsiveness and regulatory compliance. A summary of these issues and the Audit Council's responses are presented in the following section.

- (1) DETERMINE THE AMOUNT OF THE INCREASE OR REDUCTION OF COSTS OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.**

The programs and functions of the Board do not directly affect the cost of nursing home care in South Carolina since the Board does not set fees or prices for service. However, Medicaid-approved nursing homes are permitted to include licensure fees, continuing education fees, and travel expenses to certain continuing education programs as Medicaid reimbursable costs. In this manner, approximately 27% of these costs are passed on to the State taxpayers. The

remainder are reimbursed by the federal government. Also, the Board's existence as a State agency increases indirect governmental costs.

(2) WHAT ECONOMIC, FISCAL AND OTHER IMPACTS WOULD OCCUR IN THE ABSENCE OF THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW?

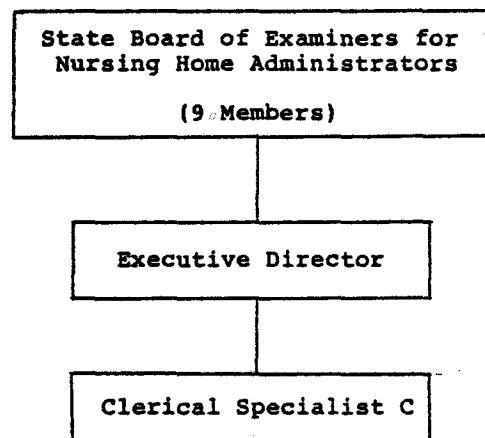
The State is required by Title 42 Code of Federal Regulations to provide a program for the licensing of nursing home administrators. The absence of this licensing function could cause the State to lose federal financial participation in the Medicaid program.

The total cost of nursing home care for Medicaid patients in FY 83-84 was \$96 million of which the State paid approximately 27% and the federal government the remaining 73%, a ratio which varies slightly every 2 years. Medicaid funding represents approximately 80% of the annual payments toward nursing home care within the State. The remainder is funded by Medicare, the Veterans' Administration and private-pay patients.

(3) DETERMINE THE OVERALL COSTS, INCLUDING MANPOWER, OF THE AGENCY UNDER REVIEW.

As shown in Table 1, the Board employs a full-time Executive Director who handles the administrative operations of the agency. A part-time Clerical Specialist primarily handles the processing of applications for the continuing education program.

TABLE 1
SOUTH CAROLINA STATE BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS
ORGANIZATION CHART



Source: Human Resource Management Division; January 6, 1984.

On the average, over the past 5 fiscal years the General Assembly has appropriated back to the Board of Examiners for Nursing Home Administrators 95% of the revenues raised through the Board's licensing and examination functions.

Most of the Board's fees have increased over the past five years. Examination application fees increased 150% from FY 80-81 to FY 83-84, while emergency license fees were reduced by 50% over the same period. Examination fees were raised partly to cover the higher fee being charged by the national testing service and continuing education fees were initiated for sponsors and individuals.

TABLE 2
SOUTH CAROLINA STATE BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS
FEE SCHEDULE

<u>Categories</u>	<u>FY 80-81</u>	<u>FY 81-82</u>	<u>FY 82-83</u>	<u>FY 83-84</u>
Application for Examination	\$ 50	\$ 50	\$ 20	\$125
Reapplication for Examination	-	-	-	75
Examinations:				
National and South Carolina	50	50	60	90
National only	40	40	45	60
South Carolina only	20	20	15	30
South Carolina for Reciprocity	50	50	50	50
Emergency License	100	50	50	50
Initial Licensure Period	200	200	200	200
Biennial Renewal:				
Active Status	200	200	200	200
Inactive Status	20	50 ¹	50 ¹	50 ²
Reinstatement of a Lapsed License	50	20 ¹	20 ¹	10 ²
Transfer of Information for				
Reciprocity to Another State	10	10	10	10
Record Change	10	10	5	5
Record Change and Reissue of				
Certificate	20	20	15	15
Copy of Licensee List	25	10	10	10
Copy of Regulations	2	2	5	5
Application for Approval of				
Continuing Education:				
By a Sponsoring Organization	-	25	50	50
By an Individual	-	-	15	15

¹Per month - 3-month maximum
²Per month - 24-month maximum

During FY 83-84, Board expenditures totalled \$37,060. This represents a 180% increase over FY 77-78 expenditures. Sixty-two percent (\$22,955) of these

expenditures were for personal services. Rent accounted for 7% (\$2,733) and Board members 6% (\$2,096) of FY 83-84 expenditures. The FY 84-85 budget totals \$49,275, a 33% increase over FY 83-84 with increases of 35% in personal services, 23% in operating expenses and 42% in employer contributions.

(4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

Analysis of the Board's purchasing practices shows that, if mailing volume increases, the Board should consider using G & H Mail Service instead of the United States Postal Service for its mail. The Board should also attempt to use General Services for its purchasing as much as possible.

The Audit Council in its review found areas where improvement is needed in Board operations to ensure the competency of nursing home administrators and adequately protect the public's health and welfare:

- (1) continuing education program; (2) examinations; and
- (3) statutory revisions.

Continuing Education Program

Subsequent to the 1979 Legislative Audit Council review which recommended that the Board establish and maintain

standards for a program of continuing education for nursing home administrators, a program was mandated in 1980. Each licensee is required to complete 40 hours of continuing education for biennial license renewal. Regulation 93-50(D) (Supp. 1984) of the South Carolina Code of Laws defines continuing education as:

...planned organized learning to augment, supplement, or update the knowledge, skills, and attitudes of nursing home administrators to the end of improving the care and wellbeing of residents in nursing homes.

The Board is mandated to establish methods, procedures, and criteria for approving programs of continuing education [Regulation 93-200(C) (Supp. 1984)].

The Audit Council finds the Board has not ensured the quality of the continuing education program. The following are several areas where improvements are needed.

Control of the Continuing Education Program

The Board is not active in approving continuing education programs. Instead, the Board leaves the evaluation and final approval process up to the Education Committee and selected evaluators. Further, the Board's method of selecting evaluators is questionable.

The Audit Council reviewed 177 continuing education programs submitted for approval from November 1983 to February 1985 and found that 66 (37%) of the 177 programs were not reviewed by any member of the Board. Instead, selected evaluators made the final decision on these

programs. Further, 42 (69%) of the 61 programs which were reviewed by the Education Committee were reviewed by only 2 of the 3 Committee members.

The Board's Education Committee is composed of three Board members. One of the Committee's three members has not been present at most of the meetings and has not evaluated programs. This has left only two Committee members to handle the majority of the Committee's responsibilities.

Further, the Board has no written procedures for selecting evaluators of continuing education programs. The Board told the Audit Council it looked for "good" nursing home administrators as criteria for selecting individuals to be evaluators. However, the Board does not define "good" in any measurable way. Administrators who accept this responsibility remain as evaluators until they no longer wish to do the job or until they fail to return their programs on a timely basis.

It is the Board's responsibility, according to §40-35-90(d) (Supp. 1984), to "evaluate and approve necessary programs of training and instruction to enable all individuals granted a license to receive forty hours of continuing education biennially as a requirement of relicensure." According to the Attorney General, it is acceptable for the Board to operate by committee if committee actions are ratified by the Board.

Program evaluators should be properly selected and trained for the job. The State Department of Education uses

evaluators for its certificate renewal courses. According to Department officials, evaluators should be selected because they know the course content and are trained in the evaluation system.

The lack of proper training and selection of evaluators raises the question of whether programs receive adequate review and evaluation. Continuing education programs are designed to:

...augment, supplement, or update the knowledge, skills, and attitudes of nursing home administrators to the end of improving the care and well being of residents in nursing homes [Regulation 93-50(D) (Supp. 1984)].

It is critical that programs be properly evaluated.

Quality of the Continuing Education Program

The Board is not taking steps to ensure the quality of the continuing education program. In its analysis of the Program, the Audit Council found the following conditions which interfere with the stated program objectives.

The Board does not conduct post evaluations of courses, and uses no means to gauge the effectiveness of the courses. Analysis showed that 49 of the courses approved by the Board between November 1983 and February 1985 had been approved in a previous year without post evaluations of their quality. This represents 28% of the total number of courses reviewed (177) during that time period. Also, Board policies and procedures do not require a passing grade on college courses taken for continuing education credit.

The Board is not actively seeking suitable courses for licensees, but is accepting and approving most courses which are submitted to them. The Board has no procedures for identifying other courses which could broaden the scope of the continuing education program, such as college or university courses. For example, last year the University of South Carolina conducted a series of courses under the heading of "The Summer School of Gerontology" and sponsored by the South Carolina Commission on Aging. Although some of these courses were designed specifically for nursing home personnel, only one administrator sought individual approval from the Board for continuing education credit in one of these courses. Since the majority of the approved courses are submitted by health care associations, licensees are limited in their choices of approved programs.

Further, the Board does not have a list of approved courses and relies on health care associations to inform the licensees of such courses through the associations' newsletters.

Regulation 93-50 (N) (Supp. 1984) defines 9 areas of continuing education study but does not require or encourage licensees to take courses from all areas. Licensees may take courses from any of these nine areas with no stipulations by the Board as to the mix of courses. Analysis of the programs approved by the Board since November 1983 shows that approximately 50% of those approved for credit fall within 2 areas: General Administrative

Theory, and Business and Fiscal Management. Another 21% came under Principles and Skills of Interpersonal Interaction. Only 14% of the approved courses deal more directly with problems of the aged and nursing home patients.

In reviewing the types of programs taken by licensees from November 1983 to February 1985, the Audit Council found that out of 67 courses taken by 23 licensees, 49% (33) of the courses fell within the areas of General Administrative Theory and Business and Fiscal Management; another 12% came under Principles and Skills of Interpersonal Interaction. Only 10% of the courses reviewed dealt more directly with the problems of the aged and nursing home patients.

Board policy directs the Board:

To ensure that continuing education programs are of the content and quality that will improve the practice of nursing home administrators and the quality of long term care.

The Board cannot ensure that these goals are met unless it establishes and maintains quality of programming.

Enforcement of Board Policies

The Board has not enforced its policy requiring sponsors to submit programs for approval 60 days prior to their being presented. In its review of the Board's records, the Audit Council found that 52 (34%) of 154 courses submitted by sponsors for approval were either submitted less than 60 days prior to the course being given

or after it was presented. None of these courses were disapproved, compared to 4 (2.3%) disapproved programs out of the total number reviewed. This does not include the courses submitted for approval by individual licensees which must be approved after they are taken.

The Board's Guidelines for Continuing Education state: "Sponsoring organizations shall submit applications 60 days prior to the program date." The State of Georgia has a provision in its Regulations which requires a request for Board approval of a continuing education program to be submitted at least 30 days prior to its implementation. By not enforcing this policy the Board may approve programs only because they had already been paid for and taken by a number of administrators. On the other hand, administrators could be paying for courses which may not be approved for relicensure.

RECOMMENDATIONS

IF THE GENERAL ASSEMBLY CHOOSES NOT TO
REORGANIZE THE STATE LICENSING PROGRAM
FOR NURSING HOME ADMINISTRATORS:

THE BOARD SHOULD BECOME AWARE OF THE
TYPES OF PROGRAMS WHICH ARE BEING
EVALUATED AND APPROVED, AND RATIFY THE
ACTIONS OF THE EDUCATION COMMITTEE.

THE BOARD'S EDUCATION COMMITTEE SHOULD BE COMPOSED OF AT LEAST THREE WORKING MEMBERS AND SHOULD BE AWARE OF ALL PROGRAMS BEING APPROVED BY THE EVALUATORS. EVALUATORS SHOULD BE CAREFULLY SELECTED AND TRAINED.

THE BOARD SHOULD CONSIDER A METHOD OF EVALUATING THE QUALITY OF COURSES AS THEY ARE PRESENTED.

THE BOARD SHOULD REQUIRE A PASSING GRADE FOR COLLEGE-LEVEL COURSES.

THE BOARD SHOULD SOLICIT A WIDER CHOICE OF COURSES FOR LICENSEES FROM SOURCES OTHER THAN HEALTH CARE ASSOCIATIONS.

THE BOARD SHOULD MAINTAIN A LIST OF APPROVED COURSES WHICH IS UPDATED ON A TIMELY BASIS AND MAKE THIS LIST AVAILABLE TO NURSING HOME ADMINISTRATORS.

THE BOARD SHOULD REQUIRE A MIX OF COURSES FOR LICENSEES SO THAT MOST

COURSES WILL NOT BE TAKEN IN ONE OR TWO
SUBJECT AREAS.

THE BOARD SHOULD ENFORCE ITS POLICY TO
APPROVE COURSES SUBMITTED BY SPONSORS
PRIOR TO THEIR BEING PRESENTED.

Examinations

The Board has not consistently applied the standards set forth in its Regulations to licensure applicants. The Audit Council reviewed all examinees for 3 exams (49 individuals) and found 8 applicants who had previously taken the national examination in another state. Of these eight, three scored less than the presently required passing grade of 75% (113 correct answers). Initially, one individual was required by the Board to retake the national exam; two were not.

The Board has not carefully reviewed applications with a view to consistency in processing out-of-state applicants. Regulation 93-140(I) (Supp. 1984) of the South Carolina Code of Laws states if the applicant has passed the national portion of the examination with a score which at least meets the requirement in 93-110(D) he may become licensed after passing the State exam. Regulation 93-110(D) (Supp. 1984) requires a passing grade level to be established for the national portion which shall be 75%.

Applicants are not treated uniformly when some applicants may be licensed with a passing grade of less than 75% and some must attain a score of 75%.

During the Audit Council review, when this problem was noted, the Board notified the applicants in question who received a grade of less than 75% that they had to retake the national exam and pass with a score of at least 75% to qualify for licensure.

RECOMMENDATION

IF THE GENERAL ASSEMBLY CHOOSES NOT TO REORGANIZE THE STATE LICENSING PROGRAM FOR NURSING HOME ADMINISTRATORS, THE BOARD SHOULD REVIEW ITS REQUIREMENTS FOR OUT-OF-STATE APPLICANTS SO THAT REQUIREMENTS ARE FAIR AND ARE APPLIED EQUALLY TO ALL APPLICANTS.

Statutory Revisions

The Board's Statutes governing the licensure of nursing home administrators are complex and difficult to apply. Current standards, as defined in §40-35-30 (Supp. 1984) and Regulation 93-80 (Supp. 1984) of the South Carolina Code of Laws, outline 3 different combinations of education and experience which may be met in order for an applicant to be approved to take the examination. Each of these options is complicated, requiring the Board to make a detailed interpretation of the applicant's education and experience in determining whether an applicant meets any of the options.

In the March 1985 Board meeting, a discussion was held regarding the qualifications of applicants. Board members stated the required experience does not always provide an adequate knowledge base to qualify applicants to administer a facility. The Board made a motion to appoint an ad hoc committee to study the need to require a four-year degree. Additionally, the majority of active South Carolina licensees have a baccalaureate or post graduate degree, even though statutes do not require this level of education. The trend in some states has been to increase educational requirements.

Audit Council analysis of Board data for 1984 shows that 159 (64%) of 249 licensees reviewed have a baccalaureate degree or a post graduate degree. Table 3 provides a break down of licensee education.

TABLE 3
DEGREES OF LICENSED NURSING HOME ADMINISTRATORS
IN 1984

<u>Degree</u>	<u>Number</u>	<u>% of Total</u>
M.D.	1	.40%
Ph.D.	3	1.20
J.D.	2	.80
Ph.G.	1	.40
Master's	28	11.24
Baccalaureate	100	40.16
R.N.	24	9.64
Associate	10	4.02
L.P.N.	9	3.61
Business Certificate	5	2.00
Medical Technician Cert.	2	.80
No Degree After H.S.	<u>64</u>	<u>25.70</u>
TOTAL	<u>249</u>	<u>99.97%</u> ¹

¹Total is less than 100% due to rounding.

Source: Audit Council analysis of the Board of Examiners for Nursing Home Administrators' records.

Amending requirements to require at least an associate degree would clarify eligibility of applicants and would upgrade license qualifications. Seventy-two percent of South Carolina's administrators now hold at least an associate degree.

Other states are revising their requirements for licensure to make them more definitive and, in some cases, more stringent. After October 1, 1985, Kentucky will accept only a baccalaureate degree, in 1 of 3 areas, for licensure. Connecticut will require a master's degree after 1988. Florida is in the process of developing associate degree programs for nursing home administration with several colleges around the state, and plans to replace its present

licensure statutes with new degree requirements when these programs have been implemented.

Although the Board revised its Statutes in 1980 subsequent to the last Council audit, the standards for education and experience are complicated and ambiguous.

The Board is careful in applying licensure standards but it cannot be completely fair unless the standards are clear and not open to equivocation. Clear requirements for education and experience, preferably with a degree required for licensure, would help to eliminate this problem.

RECOMMENDATION

IF THE GENERAL ASSEMBLY CHOOSES NOT TO REORGANIZE THE STATE LICENSING PROGRAM FOR NURSING HOME ADMINISTRATORS, THE BOARD SHOULD STUDY THE LICENSURE REQUIREMENTS OF OTHER STATES AND CONSIDER REVISING ITS STATUTES TO MAKE THEM LESS COMPLEX. IT SHOULD ALSO CONSIDER MOVING TOWARD DEGREE REQUIREMENTS FOR LICENSURE.

- (5) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS ENCOURAGED THE PARTICIPATION OF THE PUBLIC AND, IF APPLICABLE, THE INDUSTRY IT REGULATES.**

The Board sends notices to the media regarding upcoming Board meetings, posts a notice of the meeting in its offices, and holds a minimum of four meetings a year in the conference room of the Land Resources Conservation Commission in Columbia. State Statutes requiring a public member are in conflict with federal regulations. This finding is discussed in detail on page 164.

- (6) DETERMINE THE EXTENT TO WHICH THE AGENCY DUPLICATES THE SERVICES, FUNCTIONS AND PROGRAMS ADMINISTERED BY ANY OTHER STATE, FEDERAL OR OTHER AGENCY OR ENTITY.**

The Board does not directly duplicate the services, functions and programs of any other State, federal or local government entity. However, the Board's responsibility for complaint investigations is actually performed by two other State agencies. If the Board were to fully carry out its legal requirements it would be duplicating the services currently provided by DHEC and the Ombudsman's Office in the area of complaint investigation.

(7) EVALUATE THE EFFICIENCY WITH WHICH FORMAL PUBLIC COMPLAINTS FILED WITH THE AGENCY CONCERNING PERSONS OR INDUSTRIES SUBJECT TO THE REGULATION AND ADMINISTRATION OF THE AGENCY UNDER REVIEW HAVE BEEN PROCESSED.

Formal complaints are referred to DHEC and the Ombudsman's Office in an efficient and timely manner. However, the Board takes no action on the majority of these complaints and generally has no knowledge of additional complaints made directly to these two agencies. Because the Board is not active in handling complaints, the ability of the Board to protect the public from incompetent administrators is impaired. These problems are discussed in detail below.

Complaint Handling

The Board does not ensure that it is informed of all complaints against nursing home administrators received by DHEC and the Ombudsman's Office. As a result, the Board reviews only a small portion of the total number of complaints made against nursing homes. The Board has not been active in establishing coordination with other State agencies regulating nursing homes and cannot make adequate judgements regarding the qualifications, skill and fitness of administrators it relicenses.

Board records show 47 recorded complaints from May 1980 through March 1985. Seven (15%) of these were referred to

the Board by other agencies. In contrast to the small number of complaints received by the Board, a review of 10 facilities in DHEC's certification files revealed 27 complaints and a review of 12 facilities in the Ombudsman's complaint files revealed an additional 50 complaints. Only 1 of these 77 complaints had been referred to the Board and is recorded in the Board's files. This referral involved an administrator for whom the Board had already held a hearing and who was still practicing as an administrator at least 4.5 months after the Board had delayed the license renewal.

Records of the Department of Health and Environmental Control showed several complaints the Board should have received for review. For example, DHEC received 7 complaints about the same facility from March 1983 to February 1985. These complaints ranged from problems with missing clothing to patient neglect. The Ombudsman's Office also had a record of 5 complaints against this facility from September 1981 to November 1984. There is no evidence that any of these complaints were referred to the Board.

Additionally, DHEC has received eight separate complaints against one administrator, two of which were referred to DHEC by the Board. None of the other six complaints, however, were referred to the Board by DHEC. These complaints ranged from patients being awakened at 3 a.m. and 4 a.m. for baths, to patient neglect.

There is a lack of coordination between the Board and other State agencies regulating nursing homes. In 1981, the

Board sent letters to DHEC, DSS, the Commission on Aging and the Ombudsman's Office requesting that the Board be apprised of all complaints received by these agencies reflecting upon nursing home care. A review of the Board's files indicated that only the Ombudsman's Office replied to this request by establishing a memorandum of understanding with the Board. There is no evidence, however, that the Board attempted to set up a formal referral process with the Ombudsman's Office or DHEC regarding the sharing of complaints information. Since DHEC and the Ombudsman receive most of the complaints against the nursing home industry, it is necessary that the Board be aware of these complaints.

Section 40-35-90(f) (Supp. 1984) of the South Carolina Code of Laws directs the Board to:

Evaluate complaint and investigative information received from the Department of Health and Environmental Control, the nursing home ombudsman of the Governor's Office, ...or any other source, with a view to the improvement of the standards imposed for licensing, for decisions on revocation or suspension of licenses and for assessing the qualifications for relicensure of such administrators.

[Emphasis Added]

Further, in 1974 a representative from the United States Department of Health, Education and Welfare emphasized the importance of establishing lines of communication between the Board and licensing agencies.

The Board has been in operation 11 years since the recommendation to improve communication was made, but it has not taken the initiative in firmly establishing its

authority. The lack of communication between the Board and other agencies impairs the Board's ability to protect the public from incompetent or negligent administrators.

RECOMMENDATION

IF THE GENERAL ASSEMBLY CHOOSES NOT TO REORGANIZE THE STATE LICENSING PROGRAM FOR NURSING HOME ADMINISTRATORS, THE BOARD SHOULD INITIATE A FORMAL AGREEMENT WITH THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL AND IMPLEMENT THE 1982 AGREEMENT WITH THE OMBUDSMAN'S OFFICE TO ENSURE THAT ALL COMPLAINTS ARE REFERRED TO THEM. THE BOARD SHOULD ALSO DEVISE A STRUCTURE FOR REVIEWING DHEC'S CERTIFICATION REPORTS IN CASES WHERE A FACILITY HAS BEEN CITED FOR SERIOUS DEFICIENCIES AND/OR DEFICIENCIES RELATING TO LACK OF PROPER ADMINISTRATION.

Complaint Resolution

A review of Board complaint files shows 47 complaints recorded by the Board between May 1980 and March 1985. Forty of these forty-seven complaints were reported to either DHEC or the Ombudsman's Office for investigation. Of the remaining seven complaints, two were reported to DSS by

the Board, four were reported to the Board by DHEC or the Ombudsman's Office, and one was reported by the family of the patient to all three agencies.

Twenty-five (53%) of these 47 complaints were substantiated through investigations by DHEC or the Ombudsman's Office. Other than referring complaints to these agencies for investigation, the Board took no action against the administrator in 17 (68%) of the substantiated complaints.

The Board took action against licensees on 8 (32%) of the substantiated complaints. In one instance the Board suspended a license; in two instances the Board wrote letters to a licensee; and in one instance the Board Chairman telephoned the licensee. Four (50%) of the complaints on which the Board acted involved the same administrator. This individual's license renewal was formally denied 11 months after the first complaint was received by the Board. In the case of the other 17 substantiated complaints, the Board's Complaint Review Committee reported the investigation results to the Board and the Board took no action against the administrator on these complaints. These cases involved such things as poor patient care, patient neglect and poor conditions.

Although the Board has a Complaint Review Committee, the Board has not established written policies and procedures regarding complaints processing. As noted above, the Board refers most complaints to other agencies

regardless of the type of complaint received. By not taking action against administrators in the majority of cases of substantiated complaints, the Board is leaving the resolution of these complaints to other agencies.

Title 42 Code of Federal Regulations (CFR) defines an administrator as one who is:

...responsible for the overall management of the facility, enforces the rules and regulations relative to the level of health care and safety of the patients, and to the protection of their personal and property rights, and plans, organizes, and directs those responsibilities delegated to him by the governing body (§405.1121).

Based on this definition the administrator has the responsibility for many areas in the facility. According to §40-35-80 of the South Carolina Code of Laws:

The board shall have authority to determine the qualifications, skill and fitness of any person to serve as an administrator of a nursing home under the provisions of this chapter, and the holder of a license under the provisions of this chapter shall be deemed qualified to serve as the administrator of a nursing home.

No other State agency is charged with this responsibility.

Regulation 93-220 (Supp. 1984) lists 14 violations of Board's rules and regulations whereby the Board may:

...suspend or revoke a Nursing Home Administrator's license or may reprimand or otherwise discipline a licensee after due notice and an opportunity to be heard at a formal hearing.

Further, 42 CFR 431.712 directs the agency or board which licenses nursing home administrators to "investigate and act on all complaints it receives of violations of standards."

In 1984, the Assistant Attorney General said that the Board's Statutes were weak with regard to violations and hearings. He recommended that the Board review other board's regulations, such as those of the Nursing Board, regarding these issues. Toward the end of the Audit Council review, the Board proposed a limited Bill to amend §40-35-130. Included in the Bill was a proposal to allow the administering of a public or private reprimand against a licensee subsequent to a hearing.

By not being actively involved in disciplining licensees in all cases involving violations of standards, the Board is not in the position of ensuring the quality of nursing home administration.

RECOMMENDATIONS

IF THE GENERAL ASSEMBLY CHOOSES NOT TO REORGANIZE THE STATE LICENSING PROGRAM FOR NURSING HOME ADMINISTRATORS, THE BOARD SHOULD CAREFULLY REVIEW AND DEFINE ITS STATUTES REGARDING DISCIPLINE OF LICENSEES.

IF THE GENERAL ASSEMBLY CHOOSES NOT TO REORGANIZE THE STATE LICENSING PROGRAM

FOR NURSING HOME ADMINISTRATORS, THE
BOARD SHOULD ESTABLISH POLICIES AND
PROCEDURES FOR PROCESSING COMPLAINTS.

- (8) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW
HAS COMPLIED WITH ALL APPLICABLE STATE, FEDERAL AND
LOCAL STATUTES AND REGULATIONS.**

State Statutes that require a public member on the
Board are in conflict with federal regulations.

Board Composition

The Board of Examiners for Nursing Home Administrators is not in compliance with federal regulations concerning Board composition. Federal regulations require the Board to be composed of persons representing professions and institutions concerned with the care and treatment of chronically ill or infirm elderly patients, and do not allow for public members. The Board is composed of nine members: three nursing home administrators; one hospital administrator; one nurse educator; one public member not engaged in the business of nursing home administration; and three ex officio members from the Departments of Social Services, Health and Environmental Control, and the Commission on Aging.

Over the years there has been a trend to place public members on regulatory boards to ensure that there will be input from groups other than those representing the regulated occupation. Public members provide a point of view otherwise absent on a board composed solely of license holders. The original enabling legislation for the Board of Examiners for Nursing Home Administrators established public members as part of the Board in good faith to obtain input from persons outside of the nursing home industry.

The specifications for Board membership are contained in §40-35-20 of the South Carolina Code of Laws (Supp. 1984). However, Title 42 Code of Federal Regulations (CFR) states:

(a) The Board must be composed of persons representing professions and institutions concerned with the care and treatment of chronically ill or infirm elderly patients (§431.706).

The Audit Council asked the United States Department of Health and Human Services for an interpretation of this section of the federal regulations and received the following response:

..."public members" who do not represent a profession or institution concerned with the care and treatment of chronically ill or infirm elderly patients cannot serve on State licensing boards.

The Board's composition does not meet the criteria offered in 42 CFR 431.706. Therefore, the South Carolina statutes are in conflict with federal regulations.

RECOMMENDATION

IF THE GENERAL ASSEMBLY CHOOSES NOT TO
REORGANIZE THE STATE LICENSING PROGRAM
FOR NURSING HOME ADMINISTRATORS,
§40-35-20 OF THE SOUTH CAROLINA CODE OF
LAWS (SUPP. 1984) SHOULD BE AMENDED TO
COMPLY WITH FEDERAL REGULATIONS
REGARDING BOARD MEMBERSHIP AS STATED IN
42 CFR 431.706.

APPENDICES

South Carolina Department of Health and Environmental Control

2600 Bull Street
Columbia, S.C. 29201

Commissioner
Robert S. Jackson, M.D.



Board

Moses H. Clarkson, Jr., Chairman
Gerald A. Kaynard, Vice-Chairman
Oren L. Brady, Jr., Secretary
Barbara P. Nuessle
James A. Spruill, Jr.
William H. Hester, M.D.
Euta M. Colvin, M.D.

June 3, 1985

Mr. George L. Schroeder
Director, Legislative Audit Council
State of South Carolina
620 Bankers Trust Tower
Columbia, SC 29201

Dear Mr. Schroeder:

Please reference your letter of May 21, 1985, concerning the question of whether or not DHEC could take over the functions of the Board of Examiners for Nursing Home Administrators and the 1979 letter from Dr. Randall concerning the same.

As you are aware the letter from Dr. Randall was written before the Board of Examiners was reorganized based upon the Audit Council's 1979 report. The Board at that time was expanded to include three (3) ex-officio members representing DHEC, DSS and the Commission on Aging. This reorganization changed the way the Board had been functioning and improved the communication between the Board and the three Agencies.

Some of the points in Dr. Randall's letter I feel are still valid. There would be more DHEC expertise readily available to the Board and also DHEC would be in a good position to evaluate the effectiveness of administrators and direct continuing education in those areas of need.

However, as a result of cutbacks in resources over the past years, it is not felt that there would be any monetary savings since the same amount of staff, space and equipment would be needed if the function were placed in DHEC. If the legal workload is transferred from the Attorney General's office to the DHEC legal staff a cost increase to this Agency could result unless resources were transferred at the same time.

I would be very concerned at this point with assuming responsibility for an organization whose Board would function autonomously from the DHEC Board. If, however, the statute were amended to make the Board of Examiners for Nursing Home Administrators advisory to the DHEC Board such as was done with the Commission for Hearing Aid Dealers and Fitters, I feel that DHEC could effectively carry out that responsibility. We could also better evaluate the effectiveness and appropriateness of administrators since the licensing authority for both the facility and the administrator would be controlled by the same entity.

Mr. George L. Schroeder
June 3, 1985
Page 2

Please know that I am willing to work with you in any way to promote a more effective BENHA.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bob", with a horizontal line extending from the end.

Robert S. Jackson, M. D.
Commissioner

RSJ:dbw

APPENDIX B
SOUTH CAROLINA
STATE BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS
POST OFFICE BOX 11477 . CAPITOL STATION
TELEPHONE 803 758-3652
COLUMBIA, SOUTH CAROLINA 29211



August 21, 1985

Mr. George L. Schroeder
Director
Legislative Audit Council
620 Bankers Trust Tower
Columbia, South Carolina 29201

Dear Mr. Schroeder:

The State Board of Examiners for Nursing Home Administrators appreciates this opportunity to respond to the Legislative Audit Council's report, and I respectfully submit the following comments on their behalf for the Audit Council's consideration.

Introduction: Reorganization

The Board does not agree that it "has not used information maintained by the Department of Health and Environmental Control which would aid in the relicensure process in monitoring nursing home administrators' performance."

The Board relies upon the ex officio member who represents the Department of Health and Environmental Control and the State Ombudsman to refer complaints which directly involve or reflect upon the administrator of a nursing home. Some complaints do not directly involve or reflect upon the administrator. When investigated, many complaints are found to be invalid, unjustified, or cannot be substantiated. The Department of Health and Environmental Control and the State Ombudsman's office have the capability to determine which complaints directly involve or reflect upon an administrator; and there is an agreement with both agencies that these complaints will be reported to the Board.

The Board does not agree that it is "ineffectual in the complaints area as well as other important areas such as continuing education." The Board's response regarding continuing education will be given on page 3 and regarding complaints on page 6.

The Board does not agree that it "could provide more effective monitoring of its licensees and more adequate protection of public health and welfare if placed under the Department of Health and Environmental Control."

The Board reorganized under the Department of Health and Environmental Control would have no more access to that agency's records than it has as a separate agency. The ex officio member of the Board which represents the Department of Health and Environmental Control provides direct communication. Additional comments will be given on Page 6.

Recommendation

The Board does not agree with the Legislative Audit Council's recommendation that "The General Assembly should consider reorganizing the State licensing program under the Department of Health and Environmental Control." There is nothing to be gained by either agency if this recommendation is implemented; and it will remove a system of checks and balances that exists by there being two separate agencies. Although the Audit Council criticized several areas, only one - receipt of complaint information from the Department of Health and Environmental Control - may be improved if the Board is reorganized under that agency. It is quite possible that it may not be improved. The other areas which were criticized are not at all related to the Department of Health and Environmental Control; and these areas can, if needed, be revised without making the Board a department of another agency.

Rather than improving the effectiveness of the Board, reorganization under the Department of Health and Environmental Control would place the Board in a seriously questionable position. As a department of another agency, the Board would no longer have control over its own organization and affairs, and therefore would lose its autonomy. It would be a board partially controlled by a larger and more powerful board. It would become weak and obscure; and rather than becoming more effective, it would be rendered ineffective.

SUNSET QUESTIONS AND FINDINGS

Cost of Administering the Program or Functions of the Agency

The Board does not understand how the following paragraph relates to the existence of the Board as a separate agency: "Medicaid-approved nursing homes are permitted to include licensure fees, continuing education fees, and travel expenses to certain programs as Medicaid reimbursable costs. In this manner 27 percent of these costs are passed on to the State taxpayers. Also, the Board's existence as a State agency increases indirect governmental costs."

Medicaid reimbursement will not be changed if the Board is placed under the Department of Health and Environmental Control. The Legislative Audit Council's statement is irrelevant.

The Board has no data regarding the Board's existence as a State agency increasing indirect governmental costs, and none was given by the Audit Council to support their statement. Over the past five years, approximately five percent of its revenue has not been appropriated back to the Board and therefore has been used for other governmental costs.

During the past five years most of the Board's fees have increased, but they are still comparable to about twenty percent of the fees being charged across the nation by nursing home administrator examining boards. The increase in fees was necessary predominantly to implement the continuing education program. Implementation of this program required additional office space; furnishings; postage and supplies; and additional staff. Also, the agency head began working full time instead of part time and was given additional responsibility. The salary for the position is in accordance with recommendations by Hay Associates in their executive compensation report.

The Board has not increased its budget request in two years. It has always operated very conservatively and economically; by occupying a minimum of office space; using the conference rooms and examination rooms of other agencies without cost, and some of their equipment without cost or for a nominal charge; and by purchasing supplies from the most economical sources.

The Board purchases most of its supplies from General Services, but others are needed in smaller quantities than are available from General Services, and they are obtained elsewhere.

Efficiency of the Administration or Functions of the Agency

Continuing Education - The Board does not agree that it has not been active in approving and ensuring the quality of continuing education programs. The Board developed criteria to ensure quality programs and a mechanism whereby programs are submitted for review and evaluation. (See Attachment 1.) Programs that meet these criteria are approved.

Continuing education programs are generally evaluated directly or indirectly by a committee of three board members, but at times other board members have also evaluated programs. Although it is the Board's responsibility to evaluate programs, it may delegate some of this work to evaluators without violation of the Code. The volume of work is more efficiently handled by this method.

When the Board told the Audit Council that it looks for "good" nursing home administrators to serve as evaluators, it was using a general term. It was not stating a criterion. Evaluators are licensed nursing home administrators who, by education and experience in the field, have the knowledge and capability to evaluate programs. Additionally, they are individuals who have

demonstrated conscientiousness and dedication to nursing home administration and long term care.

Although training sessions have not been held since those that were held for the original group of evaluators, the Board has provided each new evaluator with the guidelines for evaluation and the criteria for approval. However, the agency goals and objectives for the present fiscal year include a review of the entire continuing education program and implementation of a training program for evaluators.

Post evaluation of courses is not formally done due to cost, time involved, and insufficient staff, but three of the board members are licensed nursing home administrators who must earn at least forty hours of continuing education credit in order to renew their licenses biennially. Also, the Board's staff and members of the Board frequently talk with administrators about the programs which they have attended. Consequently, a considerable amount of feedback is received for gauging quality and effectiveness.

A transcript and grade are required to validate the hours of attendance of a college course in order for the licensee to be given continuing education credit. A licensee may also be given credit for monitoring a college course without his earning a grade if he submits documentation of having monitored the entire course. The Board has never received an application for approval of a college course which the student failed. The Board didn't specifically state in its continuing education guidelines that a passing grade is required because neither a grade nor a certificate of achievement is required for attending a continuing education program. However, at its last meeting, the Board acted to require a passing grade on college courses which are submitted for continuing education credit.

The Board does not actively seek suitable courses for licensees because it hasn't been necessary to do so. An abundance of suitable programs have been available from the state technical colleges, various continuing education organizations, and other sources, as well as from the health care associations. Additionally there are many college courses which are related to nursing home administration and meet the criteria for approval. The Board does approve most courses submitted to them, but it is not done routinely as stated in the Audit Council's report. Use of the word "routinely" implies that programs are approved mechanically and without application of the criteria for approval. On the contrary, the criteria for approval, which includes relevance to the subject areas stated in Regulation 93-50N, are applied to each program during the evaluation process. (See Attachment 1.)

The Summer School of Gerontology was not approved by the Board for continuing education credit because the sponsor of the program did not apply for approval. Any licensee who attended could have applied for approval of the credit he earned by attending any of the courses offered, if he wanted to do so. One nursing home administrator did attend and applied for credit, which the Board approved.

The Board does not periodically mail out a list of approved programs, but it does maintain a list and a log which contains complete information on every program that is submitted for evaluation. The staff will furnish information on approved programs by telephone or mail on request. It has proven to be prohibitively costly to mail lists to all licensees as often as necessary to keep them informed. Licensees receive information about programs from at least five health care associations and many sponsors mail brochures to licensees and to the nursing homes. The Board is confident that licensees receive more than adequate information about available programs.

The Board is pleased with the variety of programs offered for continuing education. The Legislative Audit Council's analysis indicates that, since 1983, fifty percent fall within general administrative theory and business and fiscal management; nineteen percent come under principles and skills of interpersonal relationships; and fourteen percent deal with problems of the aged and nursing home patients. The Board believes that this is an excellent balance appropriate to nursing home administration, from which administrators can select courses that meet their needs.

The Board does enforce its policy which requires that an application must be submitted at least sixty days prior to the program date *to ensure receipt of notice of approval/disapproval before the program is given.* (See Attachment 2.) If the sponsor of the program wants to ensure that it receives notice of approval or disapproval prior to the program date, the application must be submitted at least sixty days in advance; but the policy does not prohibit the sponsor from submitting the application less than sixty days prior to the program date. However, those who attend a program that has not yet been approved on the date that it is presented won't receive credit if the Board does not approve the program when it is evaluated.

Examinations - The Board feels that the Legislative Audit Council has been particularly unreasonable in commenting on a singular error which was immediately corrected when it was brought to the Board's attention. (See Leg. Audit Council Report, par. 1, this section.) In this matter, the Board waived retaking the national portion of the examination for two out-of-state applicants and accepted their scores made on examinations taken previously in another state. Their scores were lower than required in this State for waiver of retaking the national portion of the examination. This was an oversight that occurred during the review of these two applications and was not intentionally done. The error was noticed very soon after the examination date and prior to licensure of the applicants. The Board contacted both individuals and advised them that they would be required to retake the national portion of the examination in this State in order to be licensed. A search of the files of out-of-state applicants revealed that this was the only time that the Board has erred in this regard. Out-of-state applications are as carefully reviewed and evaluated, if not more so, than those from within the State. The Audit Council's reason for including this incident, which was immediately corrected, in its report is not clearly understandable.

Statutory Revisions - The Board does not agree that it has not applied its licensing standards equally or that it has been inconsistent in applying its licensing standards. The Board is very careful in evaluating each application; but nursing home administration encompasses numerous disciplines; therefore, in order to provide reasonable latitude in the qualifying criteria and to avoid being too restrictive, several combinations of education and experience are authorized by State law. Consequently, to someone who is not familiar with the various combinations of education and experience and the evaluation procedure, what may appear to be inconsistency is actually careful application of the standards.

The Board agrees that the licensure requirements are complex and sometimes difficult to apply, but it does not agree that they are ambiguous, as stated in the Audit Council's report.

The licensure requirements were revised by the State Reorganization Commission with input from the Human Services Demonstration Project, the Joint Legislative Committee on Aging, the State Ombudsman, and the Chairman of this Board. The amendment was enacted April 28, 1980, and revised regulations were enacted March 23, 1983.

A comparison of the Florida, Georgia, and North Carolina laws governing nursing home administrators shows that the South Carolina pre-examination requirements are not completely unlike those of neighboring states, although there is a variance in the combination of education and practical experience among them. The Board believes that its requirements have been reasonably appropriate for the final phase of escalation from initially requiring, in 1970, that an applicant had only to have served as a nursing home administrator during all of the 1969 calendar year in order to receive a license to the present basic requirements of a baccalaureate degree and two years of specific administrative health care experience. The Board believes that its pre-examination requirements have at all times been at least on a par with other states and have exceeded the requirements of many states. At its March 14, 1985 meeting, the Board approved doing a study of its licensure requirements as a first stage of developing licensure criteria that are commensurate with advances that have been made in long term care during the past five years.

The Board has at times had difficulty deciding whether some applicants, who are applying for a license to administer an intermediate care facility for the mentally retarded, meet the qualifications. These applicants generally have a background suited to care of the mentally retarded rather than to long term health care. During the 1985 legislative session, a bill was introduced in the Senate to set forth licensure requirements more appropriate for applicants from the field of mental retardation. It received a second reading and will be placed on the calendar for 1986.

Efficiency With Which Formal Public Complaints Filed With the Agency
Concerning Persons or Industries Subject to the Regulation of the
Administration of the Agency Have Been Processed

The Board does not agree with the majority of the sections of the report that deal with complaint handling and complaint resolution. Although some of the statements made by the Legislative Audit Council are true, some of them are misleading. Rather than respond to each item in these sections, the response will be made to both sections while attempting to follow the order of the Audit Council's statements.

The majority of complaints do not require disciplinary action against the administrator. The Board has no authority to take disciplinary action against an administrator unless there is sufficient legal evidence to indicate that the administrator has clearly violated the statutes.

Complaints can range from insufficient staff, which the administrator may be making every effort to correct, to false allegations of patient abuse made by a disgruntled former employee. Complaints such as these require no corrective action by the Board; and the information regarding such complaints is of no value in making adequate judgment regarding the skill and fitness of administrators. The Board has had a written agreement with the State Ombudsman and a verbal agreement with the Director of the Division of Health Licensing and Certification of the Department of Health and Environmental Control that all complaints which reflect on the administrator will be reported to the Board. The Board has not felt that a written agreement with the Department of Health and Environmental Control was necessary since it has a representative on the Board who regularly attends the meetings. The Board has felt confident that a verbal agreement was satisfactory. It has relied upon these two agencies to report complaints that they have received, as agreed. To be consistent, a written agreement has been arranged with the Department of Health and Environmental Control.

A licensee may be disciplined upon decision and after due hearing as prescribed in Sec. 40-35-130, Code of Laws of South Carolina, 1976, as amended. An investigation and hearing can take months, but the Board has no authority to take action against an administrator until after a hearing is held. It is not an indication that the Board is ineffectual if an administrator is still working several months after a complaint has been registered and investigated.

The Audit Council commented on an "administrator for whom the Board had already held a hearing and who was still practicing as an administrator at least four and a half months after the Board had delayed the license renewal."

The complaints against the administrator were registered shortly before her renewal date and, on advice from the Assistant Attorney General, no action was taken regarding the renewal of her license until a hearing was held. Despite the Board's efforts to hold the hearing sooner, five and a half months passed before the hearing was held. After the hearing the Board's decision

was to deny renewal of the administrator's license. Her employment as the administrator of the facility in which she was employed ended as soon as she was notified of the Board's decision. During the interval between the date the allegations were substantiated and replacement of the administrator, the facility was closely monitored by the Department of Health and Environmental Control; and conditions in the facility were improved and corrected during that time.

The Board does not agree that it is "not acting on the majority of complaints." The Board takes action on every complaint that it receives. All complaints registered with the Board are reported immediately to the State Ombudsman's office and to the Department of Health and Environmental Control for investigation. If the complaint is of a critical nature, it is also reported to the Chairman of the Board by telephone. Every complaint is reviewed by the Board at the first meeting after it is received and each subsequent meeting until it is resolved. The Board does not usually take disciplinary action against an administrator if the Department of Health and Environmental Control or the State Ombudsman has recommended corrective action and the administrator has complied.

The Board believes that steps can be taken to improve some of its procedures for handling complaints, and recommendations have already been made and are being considered. Also, an amendment was introduced in the Senate during the 1985 legislative session to broaden the scope of disciplinary action which may be taken against a licensee. It received a second reading and will be placed on the calendar for 1986. The Board does not believe that the statutes should be further amended to authorize disciplinary action prior to a hearing.

Determine the Extent to Which the Agency Has Complied With All Applicable State, Federal, and Local Statutes and Regulations

The Board will seek advice concerning the public member from the Attorney General as to whether or not it is in compliance with the federal regulations.

I wish to restate the Board's position with regard to the Legislative Audit Council's recommendation to reorganize it under the Department of Health and Environmental Control.

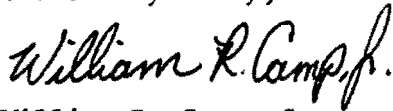
The Board does not agree that it should be reorganized under another agency. There would be no advantage to either agency nor to the public. After studies of the areas which the Audit Council criticized have been completed, if it is deemed advisable to make further changes, these can be accomplished expeditiously without changing the Board's structure. Several changes have already been made or are being considered.

Schroeder
August 21, 1985
Page 9

Merging the Board into the bureaucracy of a very large, multi-function agency would impede its ability to improve and progress. Its effectiveness would be diminished, and the Board would no longer be able to act with efficiency and carry out its mission in a timely and effective manner.

This response is being submitted with anticipation that it will provide different points of view and better insight into the functions of the State Board of Examiners for Nursing Home Administrators.

Yours very truly,



William R. Camp, Jr.
Chairman
STATE BOARD OF EXAMINERS FOR
NURSING HOME ADMINISTRATORS

WRC,Jr./bc

Attachments (2)

PS. - The quotations in this letter were extracted from the versions of the Legislative Audit Council report read on August 15 and 20.

SOUTH CAROLINA STATE BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS
P. O. Box 11477, Columbia, South Carolina 29211 Telephone (803) 758-3652

CRITERIA FOR APPROVAL OF EDUCATIONAL PROGRAMS FOR RELICENSURE
OF
SOUTH CAROLINA NURSING HOME ADMINISTRATORS

1. The sponsor has submitted a completed application for approval of continuing education.
2. The program topic is relevant to the effective functioning of nursing home administrators. It falls within the area of learning specified in the regulations (R95-50N(1)-(9)). See below.
3. The learning objectives are appropriate to the topic, the educational needs of nursing home administrators, the limitations of time and instructional methods.
4. The faculty is knowledgeable of the content by academic study, experience, or research and competent to teach.
5. The method and materials for evaluating learning are included and are appropriate to the learning objectives and plan of instruction.
6. The sponsor assumes the responsibility for monitoring attendance throughout the program, agrees to issue a certificate of attendance to attendees, and agrees to send an alphabetized roster of South Carolina attendees who receive a certificate of attendance to the South Carolina State Board of Examiners for Nursing Home Administrators.

R95-50 General Definitions - Regulations of the South Carolina State Board of Examiners for Nursing Home Administrators.

N. The term "professional education" means successful completion of a planned program of study . . . which shall include the following subject areas or their equivalents:

- (1) General administrative theory;
- (2) Business and fiscal management;
- (3) Principles and applicable standards of environmental health and safety;
- (4) Principles and skills of interpersonal interaction and relations with personnel, patients, families, various health disciplines and agencies, and the community;

RS5-50N (cont.)

(5) Health care organization at agency, local, state, and national levels;

(6) Local, state, and national statutes and regulations applicable to nursing homes and other long term care facilities;

(7) Psychologic, sociologic, and biologic principles of human development and aging appropriate to nursing home patients;

(8) Common functional problems of the aged and chronically ill and the elements of personal and psycho-social care of patients;

(9) Introduction to pathophysiologic and psychopathologic conditions common to nursing home residents and to the current medical management, nursing care and other rehabilitative and maintenance therapies.

Please DO NOT disapprove a program because of the cost or the location. These are not related to quality or relevance to nursing home administration; and these two points should be the deciding factors.

SOUTH CAROLINA STATE BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS

P. O. Box 11477, Columbia, South Carolina 29211 Telephone (803) 758-3652

TO: Organizations Which Sponsor Continuing Education Programs
FROM: S. C. State Board of Examiners for Nursing Home Administrators
SUBJECT: Application for Approval of Educational Programs for Relicensure
of South Carolina Nursing Home Administrators

The following information will assist you in submitting educational programs for review and evaluation.

Applications

1. To apply for approval of an educational program, submit in quadruplicate the "Application for Approval of Continuing Educations Program" (Form CE-3) with the attachments specified on the application form.
2. An application must be submitted at least sixty days prior to the program date to ensure receipt of notice of approval/disapproval before the program is given.
3. Applications that are incomplete or submitted without the fee shall be returned to the sponsoring organization.

Fee

1. The application fee is \$50 per program.
2. Applications will not be reviewed until the fee is received.

Programs

1. College courses, graduate and undergraduate, may be accepted for continuing education.
2. A convention, conference, convocation, etc. may be evaluated and approved as one program although several subjects are presented individually in separate sessions. Objectives must be submitted for each session of the convention.
3. Approved programs that are to be repeated within one year of the first presentation do not have to be re-evaluated unless the instructional faculty, program content, or length of instructional time has changed; but the sponsoring organization must notify the Board in writing that the program will be repeated exactly as approved and specify the date(s) on which the program will be presented. No fee will be required if only the date is changed.

Continued

Programs (Continued)

4. Programs are approved for only one year, Thereafter the application for approval must be repeated.
5. A sponsoring organization must not print approval of its program for continuing education credit by the South Carolina State Board of Examiners for Nursing Home Administrators on the program brochure or promotional materials prior to receiving official approval by the Board.
6. If a deadline must be met in printing of the programs, notify the Board by putting a special notation on the application. If the Board is notified, in this manner, it will contact the sponsoring organization by telephone as soon as the review and evaluation are completed.

Appeals

If the sponsoring organization does not agree with the evaluation, it may appeal the Board's decision.

Credit

1. Credit shall be given to attendees only if they attend the entire time for which the program was approved.
2. Attendees shall be given credit when the Board receives an alphabetized list of the South Carolina attendees with the credit each earned stated on the list from the sponsoring organization.

DEPARTMENT OF INSURANCE

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INTRODUCTION

After reviewing its operations and laws, the Legislative Audit Council concludes there is a public need for the regulation of insurance and the Department of Insurance should not be terminated. In most areas the Department's administration of its regulatory duties is efficient and effective. However, there are areas where improvements are needed.

BACKGROUND AND ORGANIZATION

In South Carolina insurance is a multi-billion dollar industry that reaches into the lives of nearly every State citizen. Every South Carolinian who has a registered motor vehicle must maintain insurance, and most homeowners have insurance. Health and life insurance have become financial safeguards few can live without. Thus, it is not surprising that South Carolinians spent almost \$3 billion on insurance in 1984.

Regulation of this industry was entrusted to the states in 1945. It was then the federal government ruled that, while insurance was a part of interstate commerce, it was exempted from federal oversight to the extent it was regulated by the states.

South Carolina established a Department of Insurance in 1908. In 1960, the Department was placed under the control and administration of a 5-member Insurance Commission. The members of the Commission were appointed by the Governor and at least three members had to represent the "general public" and have no connection with the insurance industry.

Act 488 reorganized the Commission in 1980. The Commission currently consists of seven members, one from each of the Congressional Districts and one at-large member. All are public members, who are appointed by the Governor with the consent of the Senate for a six-year term. Section 38-3-20 of the South Carolina Code of Laws

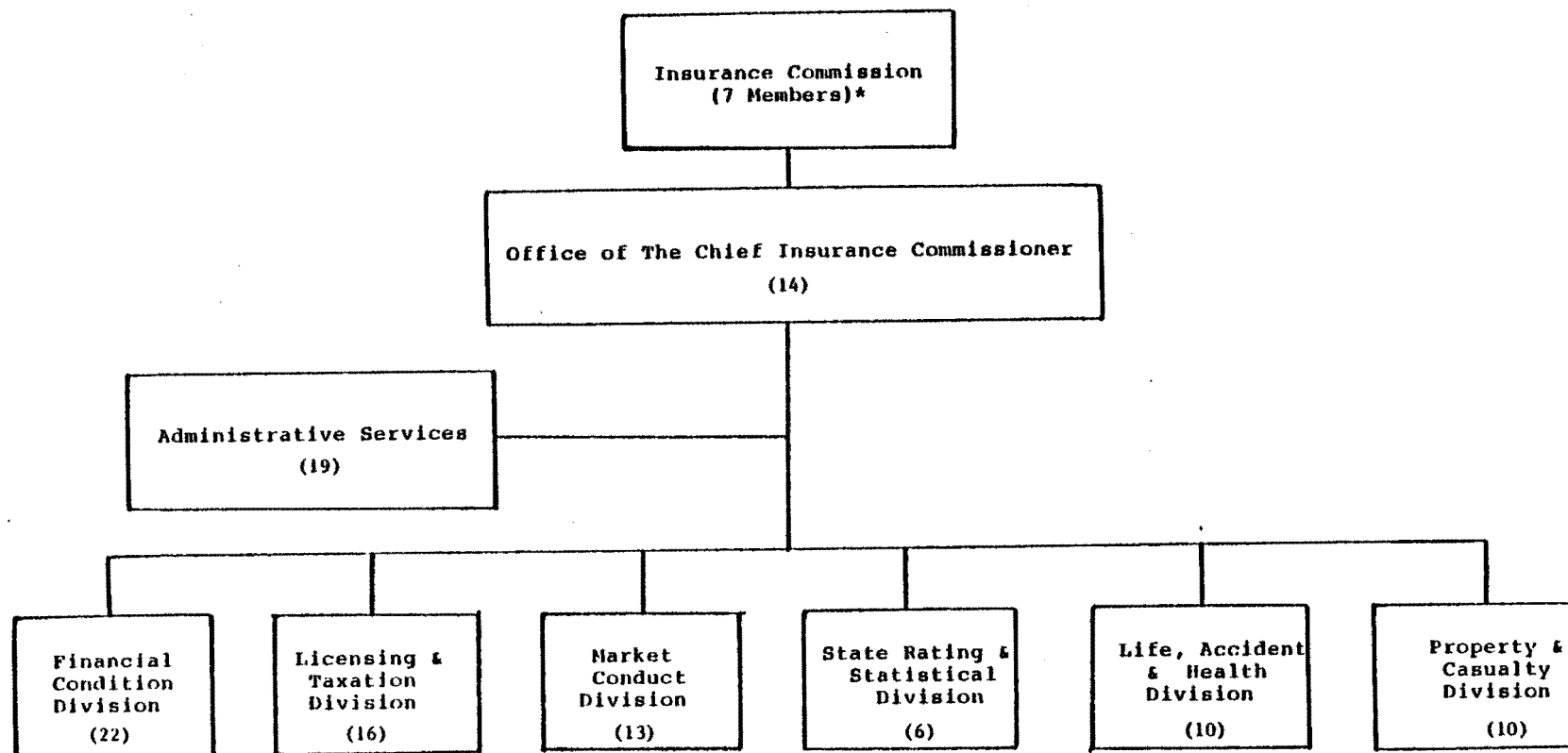
specifically limits members to 1 term. To assist the Commission in matters of insurance, an Advisory Committee of 5 members was also formed by Act 488. Section 38-3-65 specifies the Committee will consist of 1 member each from: life; accident and health; property and casualty insurance; and 2 agents, 1 engaged primarily in life, accident and health insurance and the other in the property and casualty field.

The State Statutes charge the Commission with the responsibility for hiring the Chief Insurance Commissioner. In this role, the Commission offers its "counsel and advice" to the Chief Insurance Commissioner and must be consulted before the Chief Insurance Commissioner can make new regulations, legislative recommendations and other major activities.

The Commission meets once a month and is briefed periodically by Department staff. The Chief Insurance Commissioner, who serves a four-year term, is the administrative head of the Department.

The last major reorganization of the Department in 1975 was based on the recommendation of a management study by a major consulting firm. This study reorganized the Department consistent with its three prime functions: protecting against company insolvency; ensuring fair treatment of policyholders and claimants; and administering taxation and licensing statutes. The Department has 7 divisions as shown on Table 1.

TABLE 1
SOUTH CAROLINA DEPARTMENT OF INSURANCE



*Number of personnel if more than one.

Source: South Carolina Department of Insurance Annual Report FY 83-84

Administration and Legal Services Division

The Administration Division is in charge of personnel, property control, procurement, budgeting, travel and contractual services. Data processing services within the Department also are under the Administration Division's supervision.

The Legal Services Division is responsible for overseeing the process of agent license revocation. It acts as the Department's legal counsel at hearings, prepares interpretations of new legislation and represents the Department during court proceedings.

Financial Condition Division

The Financial Condition Division is charged by State law to guard against insurance company insolvencies and the adverse impact such insolvencies would have on South Carolina policyholders. A dual approach is used to detect the underlying conditions which may precede insolvency: first, annual statements are subjected to a desk-based analysis; and second, financial records maintained at company home offices are audited. To carry out these duties the Division is divided into two sections: Financial Analysis and the Financial Examination Section.

Between FY 81-82 and FY 83-84, the Financial Examination Section conducted exams on 86 South Carolina based companies, 18 premium service companies and 35

agencies. Additionally, this Section participated in 22 exams of insurance companies based outside of South Carolina.

Licensing and Taxation Division

The duties of the Licensing and Taxation Division are two-fold: to prepare examinations and to license and collect fees from insurance agents, brokers and adjusters and to regulate the licensing and taxation of insurance companies. During 1984, the Department gave 8,620 examinations to agents, adjusters and appraisers. The 24,132 agents licensed (as of July 1, 1984) hold a total of 101,381 licenses.

This Division also enforces South Carolina Statutes, which specify the conditions companies must meet before they can do business in this State, and how they are to be taxed.

Companies renew licenses annually upon payment of a fee; taxes are collected yearly. As of December 1984, 1,255 insurance companies were licensed in South Carolina.

Market Conduct Division

The function of the Market Conduct Division is to protect policyholders and claimants from unfair practices in the marketplace. Consumer complaints and inquiries from the public are directed to this Division and channeled to one of four consumer assistants. The consumer assistant notifies the insurance company of the nature of the complaint and

tells the complainant that action has been initiated. The consumer assistant and the company correspond until the complaint has been resolved. The sole responsibility of the Division is to ensure that the law has not been violated.

The field investigation unit, consisting of 2 investigators, performed 53 investigations during 1984. If the Division investigators collect evidence to substantiate the allegations of misconduct, the case may be turned over to the Department's legal division for possible administrative or criminal proceedings.

State Rating and Statistical Division

The State Rating and Statistical Division is in charge of data collection from companies which write automobile insurance. This information is completed in monthly reports on the status of companies and is also used to generate a premium and loss statement for the end of the year. The information collected is used by the Property and Casualty Division in the rate setting process.

Life, Accident and Health Division

The Life, Accident and Health Division is given the authority to approve or disapprove policies and analyzes rate requests for individual health and accident insurance. It also approves policies for group health insurance and all life insurance. The analyst must determine that rates are adequate, yet not excessive. The forms and rates analysts

examine insurance policies to ensure they contain the required terminology and provisions. During FY 83-84, 4 life, accident and health analysts processed 29,664 filings.

Property and Casualty Division

The Property and Casualty Division promulgates automobile insurance classification plans; establishes uniform statistical plans necessary to compile data on the insurance premiums and losses; and analyzes rate filings to determine that rates are not inadequate, excessive or unfairly discriminating. This Division has been given authority to approve rates for property, casualty and automobile filings which do not require a public hearing.

During FY 83-84, the section processed 11,091 rate and policy filings. Of these, 10,648 were approved, 194 disapproved and the balance withdrawn. The Division conducted 29 public or modified rate hearings.

SUNSET QUESTIONS AND FINDINGS

- (1) **DETERMINE THE AMOUNT OF THE INCREASE OR REDUCTION OF COSTS OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.**

The regulatory functions performed by the Department of Insurance include the licensing of insurance companies, agents, brokers, appraisers, and adjusters; complaint handling; the monitoring of insurance companies for insolvency; rate setting; the collection of statistical data; and approving forms.

The Department of Insurance approves the rates for all property and casualty and all individual accident and health insurance. Thus, the Department directly influences the prices charged for these lines of insurance.

The cost of regulation is borne by the consumer in the form of higher insurance premiums. During FY 83-84, the Department of Insurance collected \$2,989,520 in assessments and licensing fees. This is approximately .1% of the total premiums collected in South Carolina in FY 83-84. Other regulatory costs include the minimum capital and surplus requirements that a company must meet before being licensed and the examination that an agent must pass prior to being

licensed. The Department of Insurance, however, is not collecting enough in licensing fees to offset the cost of regulation. This results in general tax revenues being used to cover costs rather than having the cost of regulation borne by the regulated. This is discussed in more detail in the finding below.

Department of Insurance Funding

The Department of Insurance is not collecting enough in licensing fees and assessments to offset the cost of regulating the insurance industry. In FY 83-84, the Audit Council estimates the Department of Insurance collected 20% (\$742,519) less in fees and assessments than it cost to regulate the industry.

State law requires 29 other regulatory boards to levy enough in fees to cover their appropriation. In a May 1982 letter to all agency heads the Governor stated, "The functions performed by licensing agencies should be fully self-supporting by the business and professions they monitor." The Governor stated further, "Regulatory agencies should reevaluate their fees and fine structure to increase their self-sufficiency as much as possible."

Four (44%) of the nine southeastern states collected enough in fees to cover the cost of operating their insurance departments. In three southeastern states (Florida, Tennessee and Virginia) there is specific

legislation dealing with the funding of insurance departments.

Florida has a regulatory trust fund from which fees on deposit support the cost of operating the department. Tennessee statutes state, "The Commissioner shall pay out of the fees of his office the necessary expenses of the Department." In Virginia, in addition to using license fees to offset costs, the Department can also assess the industry for up to .1% of the total premiums written in Virginia for the cost of operating the Department.

Further, the National Association of Insurance Commissioners (NAIC) model bill on insurance department funding recommends the establishment of an Insurance Regulatory Trust Fund to collect fees for Department expenses. Both the South Carolina Dairy Commission and the Public Service Commission (PSC) assess the industry for the cost of regulation. The 1982 Audit Council review of PSC found motor carriers not paying for the administrative costs of PSC and recommended they do so.

Although the insurance industry in South Carolina paid premium taxes in excess of 13 times more than it cost to run the Department of Insurance in FY 83-84, the taxing of an industry and the regulation of an industry are 2 separate functions. Taxes are levied to generate revenue to fund the operation of State government. Levying taxes is an exercise of the taxing power of government. Licensing is used to regulate a profession that if unregulated could pose a

threat to the public health, safety and welfare. Licensing is an exercise of the police power of government and as such the licensing fees should be related to the cost of regulation.

The Department of Insurance is responsible for collecting insurance premium taxes and for regulation of the insurance industry. In FY 83-84, the Department collected \$51,621,635 in taxes and \$2,989,520 in license fees and assessments. In FY 83-84, Department expenditures were \$3,773,347. Eliminating the non-regulatory function of tax collecting, the Audit Council estimates that the Department spent \$742,519 more in regulating the insurance industry than it collected in fees and assessments. Thus, the State is obligating general revenue to regulate the insurance industry.

RECOMMENDATIONS

THE GENERAL ASSEMBLY SHOULD CONSIDER
STUDYING AN ALTERNATIVE METHOD OF
FUNDING THE DEPARTMENT OF INSURANCE THAT
RELATES THE COST OF REGULATION TO THE
FEES COLLECTED BY THE DEPARTMENT.
POSSIBLE ALTERNATIVES INCLUDE:

1. ADOPTION OF THE NATIONAL
ASSOCIATION OF INSURANCE

COMMISSIONERS MODEL BILL FOR STATE
INSURANCE DEPARTMENT FUNDING;

2. AN ASSESSMENT OF THE INDUSTRY FOR
THE COST OF OPERATING THE
DEPARTMENT OF INSURANCE; OR
3. RAISING THE FEES TO COVER THE COST
OF OPERATING THE DEPARTMENT.

(2) WHAT ECONOMIC, FISCAL AND OTHER IMPACTS THAT WOULD
OCCUR IN THE ABSENCE OF THE ADMINISTERING OF THE
PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

In the absence of State regulations, the oversight of the insurance industry would revert to the federal government and be subject to federal antitrust laws and Federal Trade Commission rules. The right of states to regulate the insurance industry was established in 1869 when the United States Supreme Court held in the case of Paul v. Virginia that insurance policies do not constitute articles of interstate commerce and, therefore, are not subject to federal regulation. In 1945, the McCarran - Ferguson Act was enacted, which reaffirmed the State's power to regulate insurance in the absence of specific federal insurance legislation. Additionally, the Act exempted the business of insurance from federal antitrust provisions, but only to the extent that industry is regulated by State laws.

The economic and social impact of the absence of insurance regulation could be serious. One of the Department's functions is the examination of companies' books to prevent insolvency. If a company becomes insolvent, in the absence of State regulation, policyholders would not only lose the premiums they paid, but there would be no funds to pay claims. This could mean an economic burden for consumers, and in many cases the government would be called on to provide economic and social relief.

Consumers could be hurt in other ways by the absence of regulation. Many insurance rates would increase if left unregulated. Consumers would have to find an alternative means for resolving complaints with companies, such as non-payment and unfair or slow settlements on claims. The absence of company and agent licensing could result in unscrupulous and incompetent companies and agents.

In conclusion, the absence of the Department's programs and functions would leave the public without immediate protection from an almost \$3 billion industry. At best the federal government would take over the regulatory responsibilities, and it may not be totally responsive to the needs of the citizens of South Carolina.

(3) DETERMINE OVERALL COSTS, INCLUDING MANPOWER, OF THE AGENCY UNDER REVIEW.

The Department has 110 authorized positions (see Table 2). The operating budget has increased by 15% over the past 5 years.

Operating expenses for the Department of Insurance totaled \$3,773,347 in FY 83-84. Personal services accounted for 59% (\$2.2 million) other operating expenses 30% (\$1.1 million), and employee benefits the remaining 11% (\$408,000) of expenditures.

TABLE 2
FINANCIAL GROWTH OF SOUTH CAROLINA DEPARTMENT OF INSURANCE

	<u>FY 79-80</u>	<u>FY 80-81</u>	<u>FY 81-82</u>	<u>FY 82-83</u>	<u>FY 83-84</u>	<u>% Growth Over 5-Year Period</u>
Administration	\$ 934,041	\$ 1,040,160	\$ 1,128,407	\$ 1,098,977	\$ 1,256,553	35
Licensing & Taxation	240,111	251,710	273,300	286,365	298,542	24
Financial Condition	535,660	610,693	630,273	568,672	570,109	6
Market Conduct	245,577	270,038	260,064	251,433	279,327	14
State Rating & Statistical	854,982	944,498	742,015	698,758	486,612	(43)
Life, Accident & Health	<u>175,590</u>	<u>202,900</u>	206,333	210,695	226,658	29
Property & Casualty			<u>224,259</u>	<u>225,175</u>	<u>247,145</u>	
TOTAL Operating Expenses	<u>\$ 3,277,731</u>	<u>\$ 3,654,735</u>	<u>\$ 3,815,442</u>	<u>\$ 3,704,791</u>	<u>\$ 3,773,347</u>	15
Department Revenues	\$40,391,261	\$43,053,422	\$46,125,931	\$50,814,020	\$54,611,155	35%
Contribution Margin (Operating Cost/Revenue)	8.1%	8.5%	8.3%	7.3%	6.9%	

Source: South Carolina Budget and Control Board budget documents.

The taxes and fees collected by the Department from the insurance industry - \$54,611,155 in 1984 - have increased 35% in the last five years. The Department collected almost \$235 million between

FY 79-80 and FY 83-84 which was credited to the General Fund (see Table 2).

In FY 83-84, almost 52% of the Department's other operating expenses were attributable to data processing 41% (\$459,344) and travel 11% (\$125,312). These data processing expenses incurred by the State Rating and Statistical Division and travel expenses for the examiners and auditors are reimbursed through assessments on the industry.

The Department of Insurance collects fees for licensing agents, brokers, adjusters, appraisers and insurance companies. In FY 83-84, over \$2 million was collected from the industry. See Table 3 for a break down of fee categories.

TABLE 3
SOUTH CAROLINA STATE DEPARTMENT OF INSURANCE
FEE SCHEDULE

<u>Categories</u>	<u>Fee</u>
Annual Fixed License Fee:	
Domestic and Foreign Companies	\$100
Agency License Fee	10
Premium Service Company License Fee	500
Annual License Fee:	
Foreign Insurance Company	200
Reciprocal	200
Rating Bureaus	200
Approved Reinsurers	200
Health Maintenance Organizations ¹	100
Fraternal Benefit Associations:	
a) less than 200 members	50
b) more than 200 members	500
Appraiser License	20
Agents License:	
a) Local	10
b) General	25
c) Travel Accident or Baggage	5
Adjustors License	20
Brokers License	50

¹The annual review fee is \$100 of which \$50 is designated for the Department of Health and Environmental Control.

Source: South Carolina Code of Laws and Department of Insurance Regulations.

(4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

The Audit Council reviewed the operation of the Department of Insurance and found 5 areas where the Department could increase efficiency: (1) the collection of insurance taxes; (2) licensing of insurance agents, adjusters, appraisers and brokers; (3) the setting of fees; (4) the use of motor vehicles; and (5) the licensure procedure of agents, brokers and appraisers.

Collection of Insurance Taxes

Quarterly collection of premium taxes by both the Department of Insurance and the Tax Commission could have generated an additional \$2.2 million in interest revenue for the State in FY 83-84. The Department of Insurance collects annually from out-of-state insurance companies (i.e., those not incorporated under the laws of South Carolina) 5 different categories of insurance taxes: a 1% tax on premiums; an additional tax on premiums; a fire department premium tax; a fire insurance inspection tax; and a worker's compensation tax. In addition, the Tax Commission collects annually the domestic insurance tax.

Sections 38-5-370, 38-5-440, 38-5-1250, 38-57-120 and 42-5-150 of the South Carolina Code of Laws require collection of insurance taxes annually.

Of the 50 states and the District of Columbia, 32 (63%) collect insurance premium taxes more frequently than once a year. Five (Florida, Georgia, Kentucky, Tennessee and Virginia) of the nine southeastern states (excluding South Carolina) collect insurance premium taxes more frequently than annually, some have followed this practice for as long as twenty years. In these states (Georgia, Kentucky and Virginia) the taxes are collected based on a fraction of the previous years' tax or estimate based on the total direct written premiums received by the company either quarterly, tri-annually or semi-annually. Sunset reviews conducted in Arizona (1979) and Texas (1982) recommended the quarterly

collection of insurance premium taxes in order for the states to earn additional money in interest. The Tax Commission collects both corporate and individual taxes quarterly and collects sales tax monthly. The Department of Insurance has been collecting the broker's premium tax quarterly since 1981.

In FY 82-83, \$47,122,179 in insurance taxes was collected in South Carolina. The Audit Council estimates that the State could have earned an additional \$2.2 million in interest in FY 83-84 had the taxes been collected quarterly. Department of Insurance officials estimate that there would be a first-year cost of \$300,000 and an annual cost of \$95,000 to operate a system of quarterly tax collections. Tax Commission officials estimate that the cost of collecting the domestic insurance tax quarterly would be negligible.

RECOMMENDATION

THE GENERAL ASSEMBLY SHOULD CONSIDER
AMENDING §38-5-370, §38-5-440,
§38-5-1250, §38-57-120 AND §42-5-150 OF
THE SOUTH CAROLINA CODE OF LAWS TO ALLOW
FOR THE QUARTERLY COLLECTION OF
INSURANCE TAXES.

Licensing

The Department of Insurance renews agent's, adjuster's, appraiser's and broker's licenses annually which has resulted in lost interest revenue and cost savings to the State in excess of \$140,000 for FY 83-84. This has occurred because §38-51-130, §38-49-40, §38-47-90 and §56-13-20 of the South Carolina Code of Laws require annual renewal of licenses.

Two (22%) of the nine southeastern states renew licenses biennially. In South Carolina, 5 (17%) of 29 regulatory boards surveyed by the Audit Council either license biennially or have had biennial licensure recommended. The 1984 National Association of Insurance Commissioners model bill on insurance department funding recommends biennial licensing.

In FY 83-84, the Department of Insurance collected \$1,405,594 in agent's, adjuster's, appraiser's and broker's licensing fees. If the Department of Insurance were to license biennially and the additional year's fees were allowed to earn interest for 12 months, the estimated interest revenue for FY 83-84 would have been \$138,872. In addition, the Department of Insurance estimates it would have saved approximately \$1,826 in postage and printing costs. Thus, estimated total net revenue gained from biennial licensing would have been \$140,698.

RECOMMENDATION

THE GENERAL ASSEMBLY SHOULD CONSIDER
AMENDING §38-51-30, §38-49-40, §38-47-90
AND §56-13-20 OF THE SOUTH CAROLINA CODE
OF LAWS TO ALLOW FOR THE BIENNIAL
LICENSURE OF AGENTS, ADJUSTERS,
APPRAISERS AND BROKERS.

Fees Set by Statute

The licensing fees the Department of Insurance collects for licensing agents, brokers, appraisers and adjusters are set by statute rather than regulation. This has resulted in less flexibility and delays in making changes in fees when necessary.

The National Association of Insurance Commissioners (NAIC) model bill on insurance department funding includes 2 alternatives for setting licensing fees: (1) fees set by statute; and (2) fees set by regulation with a maximum set in the statute. Twenty-five (86%) of the 29 South Carolina licensing boards surveyed by the Audit Council set their renewal fees by regulation. Nine (20%) of 45 states responding to a NAIC task force survey on licensing set their fees by regulation. The Department of Insurance has been setting the fee for health maintenance organizations by regulation since 1975.

Fees set in statutes require an amendment to be changed. This involves the entire legislative process

including; introduction, referral to committee, three separate readings in each House, and action by the Governor. However, fees set by regulation, while allowing for legislative oversight, do not require such extensive legislative action. In addition, fees set by regulation would allow the Department of Insurance flexibility in changing fees sufficient to cover the cost of regulation (see p. 194).

RECOMMENDATION

THE GENERAL ASSEMBLY SHOULD CONSIDER
AMENDING §38-5-310, §38-51-90,
§38-27-30, §56-13-20, §38-5-400,
§38-45-160, §38-43-930, §38-21-710,
§38-5-770(1), §38-51-90, §38-49-30 AND
§38-47-30 OF THE SOUTH CAROLINA CODE OF
LAWS TO ALLOW FEES CHARGED FOR LICENSES
TO BE SET BY REGULATION.

Use of Motor Vehicles

A survey of Department of Insurance trip logs for FY 82-83 and FY 83-84 and from July 1, 1984 through March 31, 1985 of FY 84-85 revealed insufficient use to justify 2 of the 5 cars on permanent lease from the Division of Motor Vehicle Management (DMVM). This has resulted in excess costs to the agency and downtime on vehicles. For FY 84-85, the Department of Insurance had five cars on

permanent lease from the Division of Motor Vehicle Management (DMVM). Four of the cars are for agency personnel use and one car is assigned to the Chief Insurance Commissioner (although it is used by agency personnel as well).

DMVM charges agencies which have vehicles on permanent lease at a rate of 20 cents a mile with a minimum of 1,200 miles per month or 14,400 miles per year. For the time period examined, the Department of Insurance was charged for 197,202 miles. Trip logs show that the Department drove the cars only 145,307 miles. Thus, the Department was charged for 51,895 miles which it did not drive, costing the agency \$10,379. In addition, 15,351 (11%) of the 145,307 miles were commuting miles. Thus, only 66% (129,956) of the miles charged to the Department were official miles (see Table 4).

TABLE 4
DEPARTMENT OF INSURANCE VEHICLE USE

	<u>Miles Charged For</u>	<u>Actual Miles (Official)</u>	<u>Actual Miles (Commuting)</u>	<u>Actual Miles (Total)</u>	<u>Charged less Actual</u>
FY 82-83	75,565	49,497	9,054	58,551	17,014
FY 83-84	76,842	49,735	4,084	53,819	23,023
FY 84-85	<u>44,795</u>	<u>30,724</u>	<u>2,213</u>	<u>32,937</u>	<u>11,858</u>
TOTAL	<u>197,202</u>	<u>129,956</u>	<u>15,351</u>	<u>145,305</u>	<u>51,895</u>

Note: FY 84-85 covers the 9-month period from July 1, 1984 through March 31, 1985.

None of the 5 cars leased from DMVM were driven the minimum 14,400 miles per year for which DMVM charges. A

systematic sample of 16 days from the first 9 months of FY 84-85 showed that at no time were all 5 cars in use on the same days and that in only 4 (25%) of the days were 4 of the cars in use on the same day. On average only half of the cars were in use on the days sampled. Also, in only 4 of the 15 (27%) days sampled was the car assigned to the Chief Insurance Commissioner used for official business (see Table 5).

TABLE 5
CAR USAGE

<u>Date</u>	<u>Percent in Use</u>	<u>Commissioner's Car in Use</u>
07/02/84	60%	No
07/18/84	60	Yes
08/03/84	60	No
08/21/84	40	No
09/06/84	40	No
09/24/84	80	Yes
10/10/84	20	No
10/26/84	75	No
11/13/84	40	No
11/29/84	40	No
12/17/84	75	No
01/02/85	25	No
01/18/85	25	In Shop
02/05/85	25	No
02/21/85	50	Yes
03/11/85	80	Yes
Average For All Days	50%	27%

Note: If the car was used only for commuting on the day sampled, it was not included.

A review of the car assigned to the Chief Insurance Commissioner for FY 84-85 showed that 48% of the mileage on the car was commuting mileage.

Failure to properly monitor its use of motor vehicles has resulted in the inefficient use of State resources and

in the Department's being charged \$10,379 for miles not driven.

RECOMMENDATIONS

THE DEPARTMENT OF INSURANCE SHOULD
RETURN TWO OF THE FIVE CARS ON PERMANENT
LEASE, INCLUDING THE CAR ASSIGNED TO THE
CHIEF INSURANCE COMMISSIONER, TO THE
DEPARTMENT OF MOTOR VEHICLES.

THE DEPARTMENT SHOULD MONITOR ITS USE OF
MOTOR VEHICLES TO ENSURE EFFICIENT USE.

Licensure Requirements

The Department of Insurance needs to evaluate its procedures for licensure of agents, brokers and appraisers. There are no educational requirements prior to licensure; including no requirement for a high school diploma or its equivalent. The only measure of competency required by the Department is successful completion of an internally prepared exam. Additionally, there are no continuing education requirements which may help to assure the public that competent and knowledgeable agents are representing the industry. These findings are discussed in more detail below.

Development of Exams

The Department of Insurance gives 19 agent, 3 adjuster and 1 appraiser exam for licensure. All of the exams are multiple choice questions which have been developed by personnel in the Licensing and Taxation Division.

The exams were revised prior to January 1985 by the Licensing and Taxation Division with the input from other divisions within the Department. No institution of higher learning, testing experts or industry representatives were consulted to assure the objectivity, reliability or validity of the exams as a measure for the competency of agents, appraisers and adjusters.

In-house development of exams leaves the Department vulnerable to questions as to the adequacy of the tests. Testing services, such as the Educational Testing Service (ETS), are available to insurance departments for professionally designed exams, which may be tailored to meet individual state needs. Twenty-two states use ETS for the testing of agents, brokers and appraisers before licensure. Use of such a service by the Department would assure the objectivity, reliability and validity of the exams and diminish the possibility of litigation.

Continuing Education of Agents

Neither Department of Insurance regulations nor State laws require specific continuing education after licensure.

The only measure of competency of agents required by the Department is successful passage of an applicable exam (see p. 210).

The National Association of Insurance Commissioners (NAIC) adopted a model regulation in 1978 for the continuing education of agents. For agents not licensed prior to enactment of the regulation, successful completion of courses or attendance at seminars for 25 to 100 hours during a 4-year period after licensure is proposed. After the 4-year period and for agents licensed prior to the implementation of the regulations, NAIC recommends 15 classroom hours or its equivalent each year. Guidelines and standards for continuing education established by the NAIC include successful completion of:

1. Any part of the Life Underwriter Training Council Life Course Curriculum - 50 hours; Health Course - 25 hours.
2. Any part of the American College "CLU" diploma curriculum - 30 hours.
3. Any part of the Insurance Institute of America's program in general insurance - 25 hours.
4. Any part of the American Institute for Property and Liability Underwriters' Chartered Property Casualty Underwriter (CPCU) professional designation program - 30 hours.
5. Any part of the Certified Insurance Counselor program - 25 hours.
6. Any insurance-related course approved by the Commissioner taught by an accredited college or university per credit hour granted - 15 hours.
7. Any course or program of instruction or seminar developed and/or sponsored by any authorized insurer, recognized agents association or insurance trade association or any independent program of instruction, shall, subject to the approval of the Commissioner,

qualify for the equivalency of the number of classroom hours assigned thereto by the Commissioner.

8. Any correspondence course approved by the Commissioner shall qualify for the equivalency of the number of classroom hours assigned thereto by the Commissioner.

The Department of Insurance believes there is a need for the education of agents and has supported legislation of this nature. Between 1980 and 1981, two bills were proposed which would have required continuing education. However, the General Assembly did not pass these bills.

There is no stipulation that an agent acquire particular or comprehensive knowledge of his/her particular field either prior to or after licensure. Therefore, the Department of Insurance cannot assure the competency of agents to the public.

RECOMMENDATIONS

THE DEPARTMENT OF INSURANCE SHOULD
CONSIDER USING A PROFESSIONAL TESTING
SERVICE, SUCH AS THE EDUCATIONAL TESTING
SERVICE. IF AN OUTSIDE SOURCE IS NOT
ADOPTED, THEN THE DEPARTMENT OF
INSURANCE SHOULD HAVE EXPERT ADVICE IN
THE DEVELOPMENT OF EXAMS.

THE GENERAL ASSEMBLY SHOULD CONSIDER
PASSING LEGISLATION TO REQUIRE
CONTINUING EDUCATION OF AGENTS.

THE DEPARTMENT OF INSURANCE SHOULD
PROMULGATE THE NECESSARY RULES AND
REGULATIONS TO ENSURE COMPLIANCE WITH
MANDATED EDUCATIONAL REQUIREMENTS.

- (5) **DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS ENCOURAGED THE PARTICIPATION OF THE PUBLIC AND, IF APPLICABLE, THE INDUSTRY IT REGULATES.**

The Department of Insurance encourages public and industry participation. Notice of Commission meetings and public hearings are published and information booklets are available to the public free of charge upon request. However, the Audit Council determined several ways the Department could increase public participation: (1) insurers should be required to give public notification of filings for rate increases; (2) public hearings should be held for rate increases regarding individual health insurance; and (3) a consumer's guide to health insurance should be developed. These items are discussed in detail below.

Public Notice of Rate Filings

Insurance companies which write property and casualty or health and accident insurance policies can put a rate increase into effect without public notification. The Department of Insurance requires no general notice when a

company files for a rate change (increase/decrease). Public hearings are only required by statute on property and casualty rate increases where a company's premiums exceeded \$500,000 the prior year (see p. 215). Companies which write individual accident and health insurance are required to give policyholders a written notice 31 days prior to implementing a rate change. However, this notice is given after approval by the Department of Insurance has been granted.

Utility companies in South Carolina are required by §58-5-240(a) of the South Carolina Code of Laws to give public notification of filings for a rate increase and notice of scheduled hearings. Additionally, the Office of the Consumer Advocate has expressed concern about adequate public awareness in rate filings made by insurance companies.

The public most often does not receive an opportunity to question a rate increase prior to approval by the Department. The public is informed when a hearing is held for a rate filing. In FY 83-84, approximately 1,800 rate filings were received by the Department. Of these filings, hearings were conducted for 29. Although the Department believes the 31-day notice on health and accident insurance protects the public, older persons or those who may be considered high risk may not be able to obtain an alternative policy from another company offering lower rates. Additionally, policyholders of property and casualty

insurance, which includes automobile insurance, receive no notification until the premium renewal notice.

RECOMMENDATIONS

THE GENERAL ASSEMBLY SHOULD CONSIDER
REQUIRING PROPERTY AND CASUALTY
INSURANCE AND INDIVIDUAL HEALTH AND
ACCIDENT INSURANCE COMPANIES TO PUBLISH
NOTICE OF A FILED RATE INCREASE REQUEST
AND A SCHEDULED PUBLIC HEARING WHEN
APPLICABLE.

THE DEPARTMENT OF INSURANCE SHOULD
PROMULGATE RULES AND REGULATIONS TO
ASSURE THAT PUBLIC NOTICES ARE
PUBLISHED. AT A MINIMUM, THESE NOTICES
SHOULD REQUIRE THE COMPANY'S NAME, DATE
OF FILING, AMOUNT OF REQUESTED INCREASE,
THE NUMBER OF POLICYHOLDERS THAT WILL BE
AFFECTED AND ANY SCHEDULED PUBLIC
HEARING.

Public Hearings for Accident and Health Insurance

Public hearings are not held to examine the necessity
for rate changes which affect individual health and accident

insurance policies. The Statutes for the Department of Insurance do not specifically mandate that hearings be held for individual health and accident filings.

The Department is authorized to hold hearings for property and casualty insurance by §38-43-90 of the South Carolina Code of Laws. This section requires public hearings if the company's premiums for the line or type of insurance being increased equaled or exceeded \$500,000 the previous year.

Both the Department of Insurance and the Office of the Consumer Advocate believe the Department should be authorized to hold hearings on individual health insurance. Senate Bill 16 in 1984 proposes legislation which would authorize the holding of public hearings for health and accident insurance. The effect of no public hearings, coupled with no public notification of requested rate increases (see p. 213) may mean inadequate protection of consumer rights.

RECOMMENDATION

THE GENERAL ASSEMBLY SHOULD CONSIDER
REQUIRING PUBLIC HEARINGS ON INDIVIDUAL
ACCIDENT AND HEALTH INSURANCE RATE
INCREASES.

Shopper's Guide for Health Insurance

The Department of Insurance has not developed a guide to health insurance. Such a guide would serve as an aid to the public in its decisions concerning type of coverage needed and approximate costs for this coverage.

The Property and Casualty Division of the Department has designed the "South Carolina Auto Insurance Guide." This brochure provides information such as the kinds of auto insurance available, how to buy a policy, possible money savers, an expected waiting period until a claim is paid, the rights of the consumer and rate comparisons. A complaint form to the Department is also provided.

The Life, Accident and Health Division has not designed such a brochure on health insurance. In 1983, the Office of the Consumer Advocate recommended the development of such a brochure. The Department has stated it is in the process of developing such a guide.

By not having a guide to health insurance, the public is not adequately informed of different types of coverage available to meet various needs or of differences between companies. The guide would provide the public with accurate information and a competitive view of the health insurance industry without the time involvement now necessary.

RECOMMENDATION

THE LIFE, ACCIDENT AND HEALTH DIVISION
SHOULD BEGIN THE COLLECTION OF

INFORMATION NECESSARY TO DEVELOP A
SHOPPER'S GUIDE TO HEALTH INSURANCE,
SIMILAR TO THE "SOUTH CAROLINA AUTO
INSURANCE GUIDE."

- (6) DETERMINE THE EXTENT TO WHICH THE AGENCY DUPLICATES THE
SERVICES, FUNCTIONS AND PROGRAMS ADMINISTERED BY ANY
OTHER STATE, FEDERAL, OR OTHER AGENCY OR ENTITY.**

The Audit Council found no evidence that the Department of Insurance duplicates the services, functions or programs of any other State, federal or local agency. A recent United States Supreme Court decision on insurance taxes, however, could lead to duplication. This is explained in more detail in the finding below.

Insurance Taxes

Both the Department of Insurance and the Tax Commission collect insurance taxes which may be a duplication of effort if a uniform tax is found to be constitutionally required. This is due to the differing tax rate imposed on out-of-state (i.e., those not incorporated in South Carolina) insurers as opposed to in-state insurers. Out-of-state insurers are required to pay a percentage of total premiums collected in South Carolina as tax. This tax is collected by the Department of Insurance. In FY 83-84,

the Department collected \$51,621,635 at an estimated cost of \$41,308. In-state insurers pay a percentage of total premiums collected up to 5% of net income. This tax is collected by the Tax Commission. In FY 83-84, the Tax Commission collected \$1,977,482 at an estimated cost of \$16,165.

On March 26, 1985 the United States Supreme Court ruled that an Alabama law which taxed foreign companies at a different rate than domestic companies was a violation of the Equal Protection Clause of the Constitution. Since South Carolina also taxes foreign companies differently than domestic companies, the case has ramifications for South Carolina's insurance tax structure. On May 9, 1985, the General Assembly passed a resolution forming a committee to study the insurance tax laws in South Carolina.

Should the committee and, ultimately, the General Assembly decide to establish a uniform tax for both domestic and foreign insurance companies, the result would be two separate State agencies charged with the responsibility of collecting insurance taxes. This could result in a less efficient use of State resources.

RECOMMENDATION

SHOULD THE GENERAL ASSEMBLY DECIDE TO
CREATE A UNIFORM TAX FOR ALL INSURANCE

COMPANIES, THE RESPONSIBILITY FOR
COLLECTING THAT TAX SHOULD BE GIVEN TO
ONE STATE AGENCY.

**(7) EVALUATE THE EFFICIENCY WITH WHICH FORMAL PUBLIC
COMPLAINTS FILED WITH THE AGENCY CONCERNING PERSONS OR
INDUSTRIES SUBJECT TO REGULATION AND ADMINISTRATION OF
THE AGENCY UNDER REVIEW HAVE BEEN PROCESSED.**

The Department of Insurance is able to efficiently process complaints. In 1984, the Market Conduct Division of the Insurance Department handled 2,879 complaints, 854 requests for assistance and 5,617 inquiries. This includes 133 referrals from the Program Assistance Line (PAL) and 48 from the Consumer Affairs Department. The Division also performed 53 marketplace-related investigations in 1984. A sample of complaints made in 1984 found the average time of resolution of a complaint to be 62 calendar days.

The Division maintains a complaint log by computer that lists the date of complaint; the complainant; the subject and nature of the complaint; the consumer assistant to whom the complaint is assigned; the disposition of the complaint; and the date resolved.

Each month and at year-end, the Division prepares a report showing the number of complaints and requests for assistance by type of complaint and by line of

insurance. In 1983, payment delay accounted for 27% of the total complaints and requests for assistance received by the Division (inquiries are not included). The three major causes of payment delay were hospital delay, doctor delay and improperly filled out forms. Accident and health was the line of insurance with the most complaints (44%) in 1983. These reports are presented to the Commission at the monthly Commission meetings which are open to the public.

In addition to these reports, the Division also prepares a yearly claims study which shows the number of complaints received against an insurer in relation to the volume of premiums written by an insurer. Companies with a high number of complaints and low premium volume are "tracked" by the Division. The Division, however, does not have the capability to do market conduct examinations to determine if a high complaint to premium volume ratio is the result of an insurance company's practices that adversely affect its policyholders or claimants. The following finding explains this in more detail.

Market Conduct Examinations

The Department of Insurance is not conducting market conduct examinations of insurance companies. Such

examinations determine if a company's practices in the areas of sales and advertising, underwriting, rating and claims adversely affect the policyholder or the claimant.

The Market Conduct Division does not have market conduct examiners' positions. The Department's FY 83-84 budget request included a request for \$73,018 for 4 market conduct examiners, but the positions were not funded.

At present, the Market Conduct Division monitors companies in two ways. First, the Division uses financial examiners to do limited reviews of market practices. Second, if a company receives an "inordinate" number of complaints, then the Division may have a meeting with company officials to discuss any problems.

Six (67%) of the nine southeastern states (excluding South Carolina) have a separate market conduct examination section. Five bill the company for the cost of performing the exam. In South Carolina the cost of doing a financial examination is also paid by the company. Additionally, the National Association of Insurance Commissioners (NAIC) supports the creation of a separate market conduct examination section. A 1975 consultant report, which served as a model for the South Carolina Department of Insurance, states that one of the two broad purposes of insurance regulation beyond that of licensing and taxation is, "Ensuring fair treatment of policyholders and claimants." The report recommends a separate market conduct examination section.

Eleven (1%) of the 1,230 licensed insurance companies in South Carolina had a ratio of percentage of the total complaints in the State, to the percentage of total premium dollars collected in the State, of 4:1 or greater for 1983. According to Department of Insurance officials, this may be an indication of problems necessitating a market conduct examination. These companies wrote approximately 1.4% of the total insurance premiums and had more than 370,000 policyholders in 1983. Six (55%) of the 11 companies have not had a market conduct examination started by any state for the period from July 1, 1983 to April 1, 1985. In addition, 25 (48%) of the 52 domestic insurance companies do not sell insurance in any state other than South Carolina. Thus, they would not be subject to a market conduct examination from another state.

According to officials in other states that do market conduct examinations, common problems uncovered include: (1) the use of unlicensed agents; (2) improper rates; and (3) improper cancellation. Without market conduct examinations, the Department of Insurance may not be able to adequately protect the public from improper sales and advertising, underwriting, rating and claims practices.

RECOMMENDATION

THE INSURANCE DEPARTMENT SHOULD STAFF A
MARKET CONDUCT EXAMINATION SECTION TO

EXAMINE INSURANCE COMPANIES FOR IMPROPER PRACTICES IN THE AREAS OF SALES AND ADVERTISING, UNDERWRITING, RATING AND CLAIMS. THE COST OF THESE EXAMINATIONS SHOULD BE BILLED TO THE COMPANY.

(8) THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS COMPLIED WITH ALL APPLICABLE STATE, FEDERAL AND LOCAL STATUTES AND REGULATIONS.

The federal government with the passage of the McCarran - Ferguson Act in 1945 gave the states authority to regulate the insurance industry and, therefore, no federal statutes are applicable. State Statutes applicable to the Department of Insurance are being updated and revised. The Audit Council in its present review of related statutes and rules and regulations found only 2 problem areas: (1) a loop-hole exists in §38-43-910 of the South Carolina Code of Laws which may allow an insurer of property and casualty to receive more than 1 rate increase in a 12-month period; and (2) the Department of Insurance has not complied with Regulation 69-17 requiring the inspection of advertising in use by accident and health insurers. These two items are explained more fully below.

Multiple Rate Increases

An insurance company in South Carolina may be entitled to more than one rate increase in a year. By joining a rating organization, a company may receive an increase granted to the organization, although, independently, the company could have received an increase within the previous 12 months.

Section 38-43-610 of the South Carolina Code of Laws states:

...filings for property and casualty rate increases may not be approved for any insurer or rating organization for any line, subline or otherwise identifiable property and casualty insurance coverage for which a rate increase has been previously granted within the immediate proceeding twelve months...

The Chief Insurance Commissioner has said §38-43-610 allows a rate increase to be granted only once a year, except when a company may face insolvency. However, §38-43-910 may provide a loop-hole to a company joining a rating organization. This section states:

...if a rate increase for the rating organization is approved within twelve months after an insurer becomes a member or subscriber, such member or subscriber may increase its rates by the same percentage of increase granted to the rating organization.

Although the Audit Council found no cases of multiple rate increases, the South Carolina Code provides an opportunity for more than 1 rate increase to be allowed within a 12-month period.

RECOMMENDATION

THE GENERAL ASSEMBLY SHOULD CONSIDER
CLARIFYING §38-43-910 OF THE SOUTH
CAROLINA CODE OF LAWS AS TO WHETHER OR
NOT IT IS THE INTENTION OF THE STATE TO
ALLOW MORE THAN 1 RATE INCREASE WITHIN A
12-MONTH PERIOD.

Review of Advertising for Accident and Health Insurers

The Department of Insurance does not conduct in-depth inspections of advertising used by accident and health insurers. The advertising files which insurers are to maintain and which are subject to inspection by the Department, should include printed and published material, audio visual material, descriptive literature and prepared sales talks and presentations used by an insurer, agent or broker.

The Department has not developed a method of conducting the "regular and periodic" inspection of all the advertising files as required by Department Regulation 69-17. According to the Department, the financial examiners review the advertising files during their periodic audits. However, this is not the main objective of the financial audits and falls within the scope of market conduct examinations. South Carolina does not perform market conduct examinations (see p. 221).

The purpose of Regulation 69-17 is to assure truthful and adequate disclosure of all material and relevant information in the advertising of accident and health insurance. To accomplish this purpose, the Department promulgated Regulation 69-17 including the inspection of advertising files by the Department of Insurance.

By not following its own regulation, the Department can not assure truthful and adequate disclosure of advertising materials are being supplied to the public.

RECOMMENDATION

THE DEPARTMENT OF INSURANCE SHOULD
IMPLEMENT A PROCEDURE TO PERFORM REGULAR
AND PERIODIC INSPECTION OF THE
ADVERTISING MATERIALS USED BY ACCIDENT
AND HEALTH INSURERS. HOWEVER, IF THE
DEPARTMENT CAN ASSURE TRUTHFUL AND
ADEQUATE DISCLOSURE WITHOUT THE
INSPECTION, THEN REGULATION 69-17 SHOULD
BE AMENDED.

APPENDIX



JOHN G. RICHARDS
CHIEF INSURANCE COMMISSIONER

APPENDIX A

STATE OF SOUTH CAROLINA
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SAUNDRA C. ARDREY
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EDWARD K. PRITCHARD, JR.
STONEWALL M. RICHBURG
THOMAS E. ROGERS, JR.

August 21, 1985

Mr. George L. Schroeder
Director
Legislative Audit Council
620 Bankers Trust Tower
Columbia, South Carolina 29201

RE: Audit of the South Carolina Insurance Commission by the
Legislative Audit Council

Dear Mr. Schroeder:

The South Carolina Insurance Commission and the South Carolina Department of Insurance are pleased to respond to the recently-concluded audit performed by the Legislative Audit Council. We sincerely appreciate the professional manner in which the audit was conducted and the efforts made by your staff to assure that the normal operations of the Department were not interrupted. We view the audit as a positive management tool to assist us in more efficiently and effectively meeting our statutory and regulatory responsibilities.

Our response will focus upon the recommendations made in the Audit Council's report, as we agree with most of the factual findings made by the Audit Council. A general observation should be made concerning the recommendations relating to the levying, collection or expenditure of fees and taxes. On May 9, 1985, the General Assembly of South Carolina passed a concurrent resolution (S.591 of 1985) to create a committee to make a comprehensive study of the insurance tax laws. As the Audit Council correctly points out, the creation of this committee was occasioned partly as the result of the decision of the Supreme Court of the United States in Metro-politan Life Ins. Co. v. Ward, No. 83-1274 (decided March 26, 1985). The concurrent resolution, however, also makes a finding that the current system of taxing insurance companies in South Carolina is an unsystematic patchwork of legislative enactments made over a long period of time. Consequently, this committee may be an appropriate forum for the discussion of issues other than the constitutional issues raised in Ward, including some of the recommendations contained in the Audit Council report.

A. Insurance Department Funding.

We concur with the basic philosophy of both the Governor and the Audit Council that regulated persons and entities should bear the costs of regulation incurred by the State. We further believe that the insurance industry in South Carolina can be properly regulated only if adequate funding for the Department of Insurance is provided. Consequently, we agree that the General Assembly should consider studying the existing scheme of fees

and taxes now required, as well as the various methods of Department funding suggested by the Audit Council, to ensure that a fair and sensible approach to funding the costs of regulation is taken. This may be an appropriate subject for the study committee mentioned above.

B. Quarterly Collection of Premium Taxes.

We strongly concur with the Audit Council's recommendation that the General Assembly should consider amending the relevant statutes to provide for the quarterly collection of insurance premium taxes. Again, this is an item which might be addressed by the Insurance Tax Study Committee.

C. Biennial Licensing of Agents, Adjusters, Appraisers and Brokers.

As with the recommendation to require quarterly collection of premium taxes, we concur with the Audit Council's recommendation that the General Assembly should require the biennial licensing of agents, adjusters, appraisers and brokers.

D. Fixing of License Fees by Regulation.

Our response to the Audit Council's recommendation that the Department establish license fees by regulation is largely the same as that made with respect to item A above.

E. Use of Motor Vehicles.

We cannot contest the Audit Council's findings with respect to the use of motor vehicles by the Department, inasmuch as the records largely speak for themselves. We would, however, offer some explanation as to why there was an apparent under-utilization of motor vehicles assigned to the Department during the periods covered by the Audit Council's analysis. Concerning the vehicle used by the Chief Insurance Commissioner, the former Commissioner suffered lengthy periods of disability during 1984 and early 1985. As a result, he was simply not in a position to use the motor vehicle to the extent expected. The current Chief Insurance Commissioner, as well as other staff members, have utilized that vehicle to a much greater extent in recent months and we feel its continued use will be justified in the future.

With respect to other vehicles assigned to the Department, a perceptible drop in usage resulted from the Department's contracting with technical education colleges around the State to administer written examinations of agents, adjusters and appraisers. Prior to the consummation of these arrangements, Department staff members traditionally travelled about the State administering written examinations in various cities. With the administration of these examinations by the technical education colleges now in place, there is less need for Department staff members to travel in connection with this function.

While the Department staff may now travel less in connection with the administration of written examinations, the 1985 General Assembly created

three new classes of licensees (bail bondsmen and runners, insurance administrators, multiple employer self-insured health plans) to be regulated by the Department. Of these classes of licensees, it is anticipated that the regulation of bail bondsmen and runners will require extensive travel, since the relevant statutes call for the cooperation of the Department of Insurance with the clerks of court of all forty-six counties and the State Law Enforcement Division. We will, of course, closely monitor Department usage of such vehicles, and if it appears that there is still an under-utilization of Department vehicles, steps will be taken to return one or more of the vehicles to the Division of Motor Vehicle Management.

F. Licensing Requirements.

The Audit Council makes several recommendations concerning the assurance of competence of insurance agents, adjusters and appraisers both before and after being licensed. We will respond to the recommendations in the order presented in the Audit Council's report.

The first recommendation suggests that the Department should consider using a professional testing service such as the Educational Testing Service (ETS) of Princeton, New Jersey, to administer written examinations. As noted in item E above, the Department recently entered into an arrangement with technical education colleges throughout South Carolina to administer such examinations, and the Department has been well satisfied with the service and convenience provided by the technical education colleges. Consequently, we believe that this arrangement should be maintained for the foreseeable future. Nevertheless, while we believe that the examinations developed by the Department are adequate to assure an acceptable degree of knowledge and competence, we recognize the value of outside advice in the development of examinations and will seek the assistance of outside experts in this regard. The technical education colleges and the members of the Insurance Commission Advisory Committee are logical resources to "tap" in this regard.

Concerning the Audit Council's recommendation that the General Assembly should consider legislation requiring both pre-licensing and continuing education for insurance agents, the Commission and the Department have long recommended and supported such legislation and would strongly support such legislation in the future. With respect to the promulgation of regulations to ensure compliance with mandated educational requirements, we, of course, would need to have the basic enabling legislation before any such regulations could be promulgated.

G. Public Notice of Rate Filings.

In its report, the Audit Council recommends that the General Assembly consider requiring insurance companies to publish notice when applications for rate increases on property, casualty and individual accident and health insurance coverages are requested. The Department takes no exception to the Audit Council's recommendation and would support legislation in this area.

For your information, we would add that the Department has displayed a high degree of cooperation with the Consumer Advocate of South Carolina, who is charged with the responsibility of representing consumer interests before state regulatory agencies. See, S. C. Code § 37-6-604(1) (1976). The Department forwards to the Consumer Advocate copies of the filing summary forms (Forms SCID 1504 and SCID 2004) for every filing received by the Department on property, casualty and individual accident and health insurance coverages. By reviewing these forms, the Consumer Advocate can be apprised of filings being made with the Department, and he is statutorily-authorized to request the commencement of administrative proceedings with respect to any filing when he deems it to be in the public interest. See, S. C. Code § 37-6-606(1) (1976).

H. Public Hearings on Individual Accident and Health Insurance Rate Increases.

The Department concurs with this recommendation of the Audit Council and has supported similar legislative proposals in the past. We would add, however, that any legislative mandate requiring public hearings on individual accident and health insurance rate increase requests should be limited to those filings having a broad public impact. Such a limitation is currently set forth in S. C. Code § 38-43-90 (1976), which requires public hearings for property and casualty rate increases only under certain conditions. Due to the large number of individual accident and health insurance rate filings received in the Department, many of which could affect as few as half a dozen South Carolina citizens, we believe that any legislation along these lines should have some means of limiting public hearings to only those filings having a substantial public impact.

I. Shoppers Guide for Health Insurance.

We concur with the Audit Council's recommendation and would further advise that such a shoppers guide is now in draft form and should be available for publication in the near future.

J. Tax Collection Agencies.

We agree that duplication of effort by state agencies should be avoided and feel that the designation of the appropriate state agency to collect insurance taxes is a proper subject to be discussed by the Insurance Tax Study Committee mentioned hereinabove.

K. Market Conduct Examinations.

As the Audit Council correctly points out on Page 222 of its report, the 1975 study performed by the consulting firm of McKinsey and Co., Inc. recommended that the Department have a staff of four market conduct examiners. While we agree both with the Audit Council and the McKinsey report's recommendations in this regard, budgetary constraints have precluded the full staffing of these positions. To the extent possible, we have attempted to use other Department personnel (eg., financial examiners, investigators, consumer assistants, etc.) to perform market conduct analyses where warranted. Nevertheless, we concur that such positions should be staffed when, and if, funds to do so are appropriated.

L. Multiple Rate Increases.

While we believe that the Department is able to adequately enforce the State's expressed purpose of limiting rate increases to one during a twelve month period, we recognize that S. C. Code § 38-43-910 (1976) is not an especially well-drafted statute. As a rule, we are always in favor of legislation to clarify statutory provisions, so that the risks of litigation, with all of its attendant costs, may be avoided. Consequently, we would be supportive of such an effort.

M. Review of Accident and Health Insurance Advertising.

Insurance Department Regulation 69-17 requires accident and health insurers to maintain a file containing advertising materials and further provides that such files shall be subject to regular and periodic inspections by the Department. During every triennial examination of domestic insurance companies, the Department's financial examiners routinely inspect the advertising files of insurance companies. Moreover, it is standard practice among financial examiners performing zone examinations of foreign insurers to inspect advertising files. Thus, NAIC examination teams, on which examiners from the Department participate, do review insurers' advertising files. Therefore, we believe that the letter and the spirit of Regulation 69-17 have been met; however, we concur that an in-depth review of such files is an appropriate function of market conduct examiners. As the report correctly points out, in the budget for FY 1983-84 the Department requested appropriations for four (4) market conduct examiners, but these positions were not funded. On Wednesday, August 14, 1985, the Department requested funding for market conduct examiners in the FY 1986-87 Agency Budget Request submitted to the Budget and Control Board.

In conclusion, we welcome the recommendations made by the Audit Council in its report and pledge our cooperation with the Audit Council, the General Assembly and others in making the regulation of the business of insurance in this State as responsive to the needs of our citizens as possible. Once again, we thank you for this opportunity to respond to the Audit Council's report.

Respectfully,

Mary Jeanne Byrd

MARY JEANNE BYRD
Chairman
South Carolina Insurance Commission

John G. Richards

JOHN G. RICHARDS
Chief Insurance Commissioner

JGR/vpd

BOARD OF ACCOUNTANCY

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INTRODUCTION

After reviewing the laws and operation of the South Carolina Board of Accountancy, the Legislative Audit Council has concluded that regulation of the accounting profession is in the public interest and the Board should not be terminated. However, some changes in the Board's operation and laws are needed.

BACKGROUND AND ORGANIZATION

State Legislatures have enacted laws to provide regulation of the accounting profession because the integrity, objectivity and competence of public accountants is essential for consumers to make financially sound decisions. South Carolina passed its first accountancy law in 1915. The original law required that individuals representing themselves to the public as certified public accountants be registered by the Board of Examiners of Public Accountants. This three-member Board had no authority over other accountants in public accountancy and had no power to limit the practice of public accountancy to licensees. The 1915 law restricted the use of the title "CPA." In 1969, the original law was amended to create a 9-member Board of Accountancy.

Three types of accountants are licensed in South Carolina; the certified public accountant (CPA), the public accountant (PA) and the accounting practitioner (AP). The CPA must demonstrate his professional competence by passing a national examination and meeting established standards for education and experience. The 1969 legislation formed the PA classification and enabled those accountants who were using the title at that time to be "grandfathered" or remain licensed as PAs. When the grandfathering process terminated on July 1, 1972, no other individuals could be licensed as PAs. The PA is allowed to perform the same functions as the

CPA. In order to be licensed as an AP in South Carolina, an individual must hold a baccalaureate degree in accounting or pass the practice and theory section of the Uniform CPA Examination. The AP performs elementary bookkeeping and tax work but cannot render an opinion on any type of financial statement.

The fundamental role of the public accountant is to help people and organizations evaluate the use of economic resources. Their work includes accounting, auditing, tax consulting, management advice, estate planning and analysis. Accountants also are involved with accounting systems, budgets, cost controls, profit plans, internal reports, data processing and quantitative analysis. Investors and creditors rely on the independent auditor's opinion as to the fair presentation of an entity's financial condition. The presentation of this opinion, called the attest function, is limited by the 1969 law to the CPA and the PA.

The purposes of the Board of Accountancy are to measure professional skills through examination procedures, monitor and police the industry through a comprehensive licensing system, establish a Code of Professional Ethics, and administer an ongoing continuing professional education program. The Board of Accountancy meets to discuss policy, review applicants and exam results, evaluate continuing education reports and take appropriate disciplinary action for violations of the law or the rules and regulations.

Through statutory authority, the Board instituted a mandatory program in continuing professional education (CPE). Amendments in 1980 require licensees to attend 60 hours of educational activities in order to be eligible to renew their licenses.

The Board regulates more than 1,800 certified public accountants, 130 public accountants and 100 accounting practitioners (see Table 1).

TABLE 1
SOUTH CAROLINA STATE BOARD OF ACCOUNTANCY
NUMBER OF LICENSES ISSUED

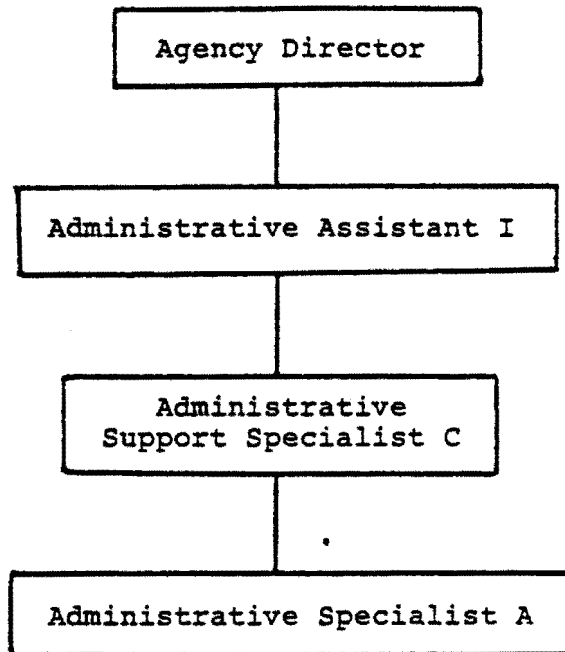
<u>Type of License</u>	<u>Number Issued by Fiscal Year</u>		
	<u>FY 81-82</u>	<u>FY 82-83</u>	<u>FY 83-84</u>
Certified Public Accountants	1,615	1,703	1,893
Public Accountants	159	143	136
Accounting Practitioners	<u>94</u>	<u>98</u>	<u>118</u>
TOTAL Number of Licenses	<u>1,868</u>	<u>1,944</u>	<u>2,147</u>

Source: State Board of Accountancy.

The Board is administered by a full-time agency Director who handles correspondence, prepares the annual budget and state-required reports, and coordinates activities within the jurisdiction of the Board. Other employees assist in carrying out office procedures necessary to operate the agency (see Table 2).

TABLE 2

SOUTH CAROLINA STATE BOARD OF ACCOUNTANCY



Source: State Board of Accountancy.

SUNSET QUESTIONS AND FINDINGS

- (1) **DETERMINE THE AMOUNT OF THE INCREASE OR REDUCTION OF COSTS OF GOODS AND SERVICES CAUSED BY THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY UNDER REVIEW.**

The Board of Accountancy has no direct control over prices charged by licensees for services rendered. The Board does assess fees for examination, reexamination and annual licensure (see p. 244). Continuing education is required for each licensee, and most continuing education programs charge registration fees. Such costs of regulation may be passed on to the consumer. Possible increases to the price of accounting services due to the cost of regulation do not outweigh the benefits to the public which accompany such regulation.

- (2) **WHAT ECONOMIC, FISCAL AND OTHER IMPACTS WOULD OCCUR IN THE ABSENCE OF THE ADMINISTERING OF THE PROGRAMS OR FUNCTIONS OF THE AGENCY?**

Regulation of the practice of public accounting has been recognized as an appropriate governmental function in every state and United States territory. Certified public accountants are subject to

examination, licensure and regulation by accounting laws nationwide.

Among the reasons recognized in support of regulation is the protection of two groups, the entities that actually purchase the service, and those that rely on the representations made in financial statements. Business and industry often rely on the judgement of certified public accountants in making long-range financial plans and related decisions. Third parties rely on the attest function (formal, professional opinions of CPAs found in financial statements) to judge the financial soundness of a potential investment.

Deregulation would increase the likelihood of inadequately prepared financial statements, which in turn could result in losses to the business involved and third-party investors. Substandard reports and audits could destroy investor and stockholder confidence and result in loss of investment capital for business and industry. Loss of capital investments could endanger the health of the economy and impair commerce within South Carolina.

The public's ability to identify a skilled accountant would be substantially impaired if no uniform examination and licensure process were available through State regulation. Persons would be reluctant to open businesses or invest in South

Carolina if they were forced to investigate each accountant to assess professional competency.

South Carolina practitioners could be prevented from working with certain federal programs and filing documents with the Internal Revenue Service (IRS) and the Securities and Exchange Commission (SEC) if they had no means to be licensed as certified public accountants. If licensure status was desired by these professionals, they would have to move to another state or find one willing to license nonresidents.

The risks of deregulating accounting practices include loss of uniformity in reporting financial transactions and potential for financial mismanagement. The interests of the public dictate continued regulation of the accounting profession and its functions.

(3) DETERMINE THE OVERALL COSTS, INCLUDING MANPOWER, OF THE AGENCY UNDER REVIEW.

The Board has four authorized positions. The operating budget has increased by 165% for the 5-year period ending June 30, 1984. Operating expenses for the Board totaled \$212,603 in FY 83-84 with personal services accounting for \$68,674 (32%) and other operating costs accounting for \$143,929 (68%) of the total. Of this latter amount, over 50% (\$79,833) was

spent on contractual services. Excess fee revenue reverts to the State's General Fund at year-end. In FY 83-84 this amounted to \$21,095.

The Board of Accountancy collects fees from CPAs, PAs and APs. In FY 83-84 over \$233,000 was collected from the industry. Table 3 presents a breakdown of fees.

TABLE 3
SOUTH CAROLINA STATE BOARD OF ACCOUNTANCY
FEE SCHEDULE

<u>Categories</u>	<u>Fee</u>
Certified Public Accountant:	
Initial Examination	\$100
Re-examination	
One part	40
Two parts	80
Three or four parts	100
Accounting Practitioner:	
Initial Examination	80
Education	50
Public Accountant:	
No new licenses issued, only renewal of old licenses	
Certificate	20
License Renewal (annual) ¹	60
Reciprocity Application	50
Transfer of Credit	100
Non-Resident Registration (annual)	
Individual	20
Partnership	38

¹Regulation 1-12 restricts annual renewal license fee to \$50 (see p. 263).

Source: State Board of Accountancy.

(4) EVALUATE THE EFFICIENCY OF THE ADMINISTRATION OF THE PROGRAM OR FUNCTIONS OF THE AGENCY UNDER REVIEW.

Administration of the accounting law by Board staff is efficient. Use of services made available to all State agencies, such as purchases of supplies and the presorting of mail to save postage costs, are in place. Staff adheres to the guidelines set forth by the American Institute of Certified Public Accountants (AICPA) regarding examination procedure to ensure security of the test, confidentiality of the contents, and anonymity of the examinees. Use of the uniform CPA test and the national grading service adds to efficiency. The following, however, are areas where improvements are needed: (1) licensing of accounting practitioners; (2) annual licensure; (3) policies and procedures; (4) examination prerequisite; (5) license renewal requirements; and (6) advertising restrictions.

Licensing of Accounting Practitioners

In the 1979 Sunset Review of the Board of Accountancy, the Legislative Audit Council found that licensure of accounting practitioners (APs) was unnecessary and not in the public interest. The Council recommended that §40-1-510 through §40-1-600 of the South Carolina Code of Laws which creates and governs the accounting practitioner class be repealed. The effect of these sections is to prohibit the

use of the term AP by unlicensed persons and businesses. Functions performed by APs can also be performed by unlicensed entities as long as the title or designation of AP is not used, and the nonlicensed status is disclosed. The Council again advances the recommendation that licensure of APs be eliminated.

Sections 40-1-510 and 40-1-540 give authority to the State Board of Accountancy to regulate practitioners involved in developing, recording, analyzing or presenting financial information and in rendering advice or assistance regarding accounting controls, systems and procedures.

In practice, the work performed by accounting practitioners is limited to elementary accounting services and bookkeeping. This includes posting accounts, maintaining journals, billing, reconciling bank statements and performing monthly trial balances. The AP cannot render any opinion, certify or attest to the fairness or validity of any financial statement or report.

The mandatory licensing of the approximately 118 accounting practitioners by the State is unnecessary because an AP cannot exercise the attest function, the opinion upon which the public relies for financial decisions. Investors, stockholders and other parties do not depend on accounting practitioners to manage or report their financial interests.

The licensing process should not be used to provide a group with prestige or status; it should be used to protect the public welfare. The proliferation of professional

titles may create confusion and risks the dilution of quality in the public practice of accounting. The public may be confused by three classes of accountants; CPAs, PAs, and APs, which perform many of the same services at different levels of qualification or competence.

There is a nationwide trend away from licensing a practitioner-level class. Thirty-five states issue licenses only to CPAs. Of the 15 states that license groups other than CPAs, only 4, including South Carolina, license APs. (In 1979, fifteen states licensed APs.) The remaining states issue licenses to specialized groups. Five states continue to license public accountants; three license registered public accountants, and one state each licenses licensed public accountants and municipal public accountants. One state licenses public school accountants and registered municipal accountants who must be CPAs. No State allows APs to attest to financial statements or express an opinion as an independent auditor. The Model Public Accountancy Bill, a joint effort of the AICPA and the National Association of State Boards of Accountancy (NASBA), issued in 1984, does not provide for the licensure of a practitioner class. Also, the Legislative Policy of the AICPA states:

There is no such compelling need for licensing and regulation of persons offering record-keeping and elementary accounting services performed at the instance of, and for the benefit of, employers and clients.

The attest function and audit opinion, which relate to third-party reliance (such as investors and shareholders) are the only accounting services which necessitate and justify legislative control.

Bookkeeping services, tax return preparation services, management and business consultants, and other related services performed by APs are not regulated. For example, the 1985 Columbia telephone directory contains Yellow Page advertisements listing 18 local providers of bookkeeping services, many tax and small business consultants, and various management and general business consultants. None of these providers are licensed or regulated by the State of South Carolina. Only four accounting practitioners are listed in the Columbia Yellow Pages.

RECOMMENDATION

THE GENERAL ASSEMBLY SHOULD CONSIDER
REPEALING §40-1-510 THROUGH §40-1-600 OF
THE SOUTH CAROLINA CODE OF LAWS
GOVERNING ACCOUNTING PRACTITIONERS.

Annual Licensure

License fees assessed by the Board of Accountancy were collected on a biennial basis until FY 82-83. The change to annual collection of fees has cost the State approximately \$14,331 in expenses and lost revenues each year. The costs for annual licensing include printing, supplies, postage and

the interest lost on an amount equal to one year's collection in fees. This figure does not include saving staff time that would occur if licensing activities were scheduled every other year. For example, the Administrative Assistant's position questionnaire allocates 10% of her time to supervising an assistant in maintaining records of all licensees eligible for annual license renewal and other related activities. A change to biennial licensure could allow staff to engage in other activities beneficial to the Board.

Collection of license fees could revert to biennial handling without harm to the public. Twenty-three states assess fees every other year, and the Model Accountancy Bill, developed in 1984, recommends a two-year renewal period. Two states, New York and Ohio, use a triennial collection method.

According to the Board of Accountancy, it changed its method of fee collection from biennial to annual in order to offset possible shortfalls in the year when fees were not collected. Funds not expended by the Board are lapsed to the General Fund at the end of the fiscal year.

Under Board Regulation 1-8, a \$20 fee for the issuance of a certificate to newly qualified CPAs is charged. This regulation provides that no further license fee will be assessed until the next renewal date. An amendment to this regulation to permit collection of license fees in addition to the certificate fee would be necessary to avoid the loss

of revenue that could occur if biennial renewal was instituted and the regulation remained the same.

The Board could save staff time and money by returning to biennial licensing. Collection of a sum equal to two years of fees would enable the State of South Carolina to earn interest on the unexpended amount for one year. The lost interest for FY 83-84 equals \$12,733. Savings in printing, postage and supplies would bring the net savings/earnings to \$14,331 annually.

RECOMMENDATIONS

THE GENERAL ASSEMBLY SHOULD CONSIDER
AMENDING §40-1-270 OF THE SOUTH CAROLINA
CODE OF LAWS (SUPP. 1984) TO ALLOW
BIENNIAL COLLECTION OF FEES.

IF BIENNIAL COLLECTION OF FEES IS
INSTITUTED, THE BOARD OF ACCOUNTANCY
SHOULD AMEND REGULATION 1-8 TO ALLOW
COLLECTION OF LICENSE FEES FROM NEWLY
QUALIFIED CERTIFIED PUBLIC ACCOUNTANTS.

Policies and Procedures

The Board of Accountancy has not developed a manual outlining its policies and procedures, although the Administrative Procedures Act and good management practice point to the need for such a document. Although the Board's

Executive Director indicated that a policies and procedures manual would be helpful, one has not been developed.

The Board has not taken the initiative to create a manual of its policies concerning its operation. Minutes of the Board meetings are identified as the source of policy statements. While the minutes may assist Board members and staff, determination of the Board's position regarding publication of disciplinary actions and other Board actions is difficult for both licensees and the public at large.

Section 1-23-140 of the South Carolina Code of Laws (Supp. 1984) details the need for written guidelines for all State agencies. It states:

(a) In addition to other requirements imposed by law, each agency shall:
...(2) Adopt and make available for public inspection a written policy statement setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency; ...

Written policies and procedures should be developed by the Board in order to facilitate consistent decision making by Board members as well as to enhance public understanding of the Board's purpose and operations.

The absence of written policies and procedures subjects the Board to charges of disparate treatment of applicants for licensure. For example, the Board does not have uniform written procedures for governmental entities to follow in qualifying employees' auditing experience (400 hours) necessary for certification. The Board accepted a plan

proposed by the South Carolina Tax Commission which was presented in the form of a two-page memorandum describing conditions with which candidates for the program should comply, and responsibilities of the person who would head the program. In contrast, the Internal Revenue Service has, since 1976, corresponded with the Board concerning qualifying some of its agents' work experience for certification. No agreement has been reached as of August 26, 1985, although the IRS developed and presented to the Board a 46-page audit manual in May 1985, after discussion with the Board. This manual was developed from the AICPA Audit and Accounting Manual as the Board advised.

RECOMMENDATION

THE BOARD SHOULD DEVELOP A POLICIES AND
PROCEDURES MANUAL FOR ALL ITS DECISION
MAKING ACTIVITIES.

Examination Prerequisite

The prerequisite of good moral character is broad and should be refined to clearly state what the Board requires in an applicant for examination. Section 40-1-180 of the South Carolina Code of Laws requires an applicant to submit to the Board evidence of legal age, education, residency and good moral character. The prerequisite of good moral character is not defined, and as a result is vague and subjective. This issue was addressed in the 1979 Audit

Council review of the Board. In its comments to the Council, the Board agreed that a better definition of this term was needed; however, the law has not been amended, and the Board has not promulgated regulations to clarify the meaning of the term.

Eleven states do not have a requirement of good moral character for applicants for the examination. Two states use specific language in dealing with this prerequisite; Nevada requires fiscal integrity and no history of acts involving dishonesty or moral turpitude. New Hampshire requires "good professional character."

The Model Public Accountancy Bill requires good character for the issuance of a CPA certificate. The Model Bill defines "good character" as a "lack of history of dishonest and felonious acts," and outlines the circumstances under which a Board may apply this standard. This provision is designed to be narrowly applied and could serve as a basis for modification of the South Carolina requirement. Records reviewed from FY 81-82 through FY 83-84 show the Board refused to allow three individuals to be examined, citing lack of "good moral character" as the basis for its decision. Continued use of a vague standard cannot assure fairness to all applicants and leaves the Board open to charges of partiality.

RECOMMENDATION

THE GENERAL ASSEMBLY SHOULD CONSIDER
AMENDING §40-1-180 OF THE SOUTH CAROLINA
CODE OF LAWS TO MORE CLEARLY DEFINE
"GOOD MORAL CHARACTER" AS A PREREQUISITE
FOR EXAMINATION, AND PROVIDE FOR ITS
NARROW APPLICATION.

License Renewal Requirements

License renewal after revocation for nonpayment is subject to different exceptions created in the Code because the accountancy law governs CPAs and PAs through the provisions of one article, and regulates APs in another article. According to State law, an accounting practitioner can lose the privilege to hold a permit to practice upon failure to renew within three years, unless "excusable neglect" can be shown. This permanent loss is not present for a CPA or PA who fails to renew a license. In a related issue, the Board has, in practice, created a category of licensees who have an inactive status, but has not promulgated regulations concerning this exception to license renewal requirements.

Section 40-1-280 of the South Carolina Code of Laws allows a penalty to be charged, as well as back fees assessed against a CPA or PA licensee, prior to reinstatement after a license has been revoked for nonpayment of fees. Section 40-1-560 (Supp. 1984) requires

APs to pay a fee for a permit to practice within 3 years of a permit's expiration date or within 3 years of granting the AP a license, if no permit was ever issued, unless "excusable neglect" has been found. No Code reference or Board regulation establishes an inactive licensee category.

Different statutory exceptions to license renewal for APs is a result of separate treatment in the Code of the classes of licensees.

Penalties for failure to renew a license or permit should be uniform among the three regulated classes, so that licensees who fail to pay renewal fees are subject to the same degree of potential professional loss. In addition, equity among the members within one class should be assured by establishment of regulations governing the creation and requirements for inactive status.

Exceptions to license renewal requirements which are different for APs than for CPAs and PAs create disparate results which are of questionable merit. Accounting practitioners are subject to the same requirements for continuing education as CPAs and PAs, and the ethics code outlined in the law is effective for all three groups. Little reason for different license renewal exceptions exists.

Disparate treatment among the members of one group is also a problem. Lack of regulations concerning the opportunity for inactive status could result in licensees

having licenses revoked when a lesser "penalty" (inactive status) could serve the same purpose.

RECOMMENDATIONS

IF THE BOARD OF ACCOUNTANCY CONTINUES TO
LICENSE ACCOUNTING PRACTITIONERS,
PROVISIONS RELATING TO LICENSE RENEWAL
EXCEPTIONS SHOULD MIRROR REQUIREMENTS
FOR CPAs AND PAs.

THE BOARD OF ACCOUNTANCY SHOULD
PROMULGATE REGULATIONS CONCERNING THE
INACTIVE LICENSEE STATUS.

Advertising Restrictions

The Board of Accountancy has restricted certain forms of advertising by licensees through regulation. One restriction prohibits the use of testimonials or endorsements.

The Federal Trade Commission's (FTC) position is that prohibitions of testimonials and endorsements present an undue restriction on licensees. A similar regulation of the Tennessee State Board of Accountancy was investigated by the Federal Trade Commission in 1984. As a result of negotiations with the FTC, the Tennessee Board amended its regulations. The FTC intends to continue its examination of state laws governing advertising by licensed groups.

The Board of Accountancy has taken a conservative approach to licensee advertising by disallowing use of testimonials and endorsements. The Board's regulation of advertising should focus on public need, and permit advertising practices that inform the public and allow the use of statements from consumers of a licensee's service.

RECOMMENDATION

THE BOARD OF ACCOUNTANCY SHOULD AMEND
REGULATION 1-33(B) GOVERNING ADVERTISING
TO ELIMINATE THE RESTRICTIONS AGAINST
TESTIMONIALS AND ENDORSEMENTS.

- (5) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW
HAS ENCOURAGED THE PARTICIPATION OF THE PUBLIC AND, IF
APPLICABLE, THE INDUSTRY IT REGULATES.**

The Board has made some progress towards increasing public participation in Board activities. Section 40-1-80 of the South Carolina Code of Laws (Supp. 1984), promulgated in 1982, altered the composition of the Board to require 2 of the 9 Board members be public members not engaged in the practice of public accounting.

In addition, the Board has made an effort to increase public awareness of its meeting dates by

submitting notices of meetings to a major Columbia newspaper.

Meetings of the Board are generally held at the Board office in Columbia. However, the Board held one meeting at Clemson University in January 1985. The response from faculty and students was positive, and the Board has stated it plans to continue this practice.

Input from the regulated profession is apparent in the attendance and participation of the Certified Public Accountants Association President and Executive Director at Board meetings. The President of the Public Accountants Association also attends Board functions.

(6) DETERMINE THE EXTENT TO WHICH THE AGENCY DUPLICATES THE SERVICES, FUNCTIONS AND PROGRAMS ADMINISTERED BY ANY OTHER STATE, FEDERAL, OR OTHER AGENCY OR ENTITY.

Regulation and licensing of the profession of public accounting is the mission of the Board of Accountancy, which has sole authority over the profession. No other State board or agency has the power to license or regulate accountants. The role of the federal government in regulation of accountants is minimal. There are certain requirements with which an accountant must comply when submitting documents to

federal agencies like the IRS and the SEC. The FTC has recently become active in examining possible trade restrictions imposed by state laws and regulations with regard to advertising and location of a business. In that respect, federal involvement is present. Actual duplication of services, functions or programs of the Board does not exist.

- (7) EVALUATE THE EFFICIENCY WITH WHICH FORMAL PUBLIC COMPLAINTS FILED WITH THE AGENCY CONCERNING PERSONS OR INDUSTRIES SUBJECT TO THE REGULATION AND ADMINISTRATION OF THE AGENCY UNDER REVIEW HAVE BEEN PROCESSED.**

The Board of Accountancy has improved its complaint handling process and has instituted a program of audit review to identify substandard audit reports issued by licensees.

A central complaint log has been developed that includes a file number, the source and nature of the complaint, the licensee involved, dates of initial contact, response, and closure of the case, as well as the range of actions taken by the Board. Complaints involve both licensees and unlicensed persons representing themselves as licensees. Sources of complaints range from those generated by the Board, for example, advertising problems from telephone

directories, to newspaper articles, audit review reports, and as letters from consumers and licensees.

The Board has created a program of positive enforcement, which has enabled the identification of substandard reports and allowed the Board to issue consent agreements to require licensees to take additional continuing education courses or other remedial action. The Board has been given access to audit reports required by the Licensing Board for Contractors and audits of counties and municipalities. A part-time consultant is used to coordinate CPA volunteers who review these reports, and he later screens this work. A 34-page checklist for review of government reports is used to screen county and municipal reports, and generally accepted auditing standards to generally accepted accounting principles (GAAS to GAAP) requirements are used for the Licensing Board for Contractors' audits.

Audit Review

The Board of Accountancy has been successful in developing a program for detecting substandard work and instituting policies that require licensees to improve their work. A full-time investigator who could identify unlicensed persons, process complaints, and coordinate the positive enforcement effort would enhance the growth of the audit review program. One of

the functions of the Board is to protect the public from unlicensed persons and from inadequate services rendered by licensees. The positive enforcement program became a priority in 1982 to enable the Board to provide better service to the public.

Audit reports of corporate financial statements have been the subject of allegations of CPA malpractice in increasing numbers nationwide. In FY 84-85, the Board of Accountancy conducted 508 audit reviews. Of these reviews, 136 were identified as deficient, that is, not meeting the generally accepted auditing standards for reporting. To address the problem of substandard reports, review of audit reports has been encouraged by the American Institute of Certified Public Accountants. South Carolina has participated in the national trend through its positive enforcement program.

The Executive Director conducts complaint investigations, determines the legal actions that the Board can choose to take against a licensee, and reviews all the work conducted by the audit report reviewers and part-time consultant. The Executive Director indicated that a full-time person could enable the Board to increase the number of reports reviewed as well as conduct complaint investigation. The additional cost of a full-time employee could be absorbed by using the amount allocated for the

part-time person and the money that lapses to the State General Fund at the end of the fiscal year; in FY 83-84 this was \$21,095. If a full-time investigator were hired, more audit reports could be reviewed, and identification of inadequate work would result. The availability of an investigator would allow the Board to seek access to other audit reports which would ultimately be in the public interest.

RECOMMENDATION

THE BOARD OF ACCOUNTANCY SHOULD CONTINUE ITS POSITIVE ENFORCEMENT PROGRAM AND EXPAND ITS ACTIVITIES TO INCLUDE AS MANY AUDIT REPORTS AS POSSIBLE. THE BOARD SHOULD CONSIDER HIRING A FULL-TIME INVESTIGATOR TO HANDLE ALL COMPLAINT INVESTIGATIONS AND SUPERVISE AUDIT REVIEW ACTIVITIES.

- (8) DETERMINE THE EXTENT TO WHICH THE AGENCY UNDER REVIEW HAS COMPLIED WITH ALL APPLICABLE STATE, FEDERAL, AND LOCAL STATUTES AND REGULATIONS.**

The Board of Accountancy is not subject to federal statutes and regulations, nor must it comply with any local ordinances. The Board's conduct is governed by State law and regulations in two respects; the Board

must comply with its own laws and regulations, and it must conform to the requirements of the South Carolina Administrative Procedures Act.

The Board has not met some aspects of both of these requirements in establishing license fees and application dates.

License Fee Maximum

Since FY 83-84, the Board of Accountancy has assessed its licensees a renewal fee in excess of the ceiling set by its own regulation. While provisos in the Appropriation Acts for FY 83-84 and FY 84-85 allowed the Board to adjust its license fees notwithstanding certain statutory provisions, the Board did not amend its regulation to reflect the change. The current Board regulation governing license fees sets the maximum at \$50 annually. The Board has collected a \$60 annual renewal fee for 2 years, and intends to do so in FY 85-86. One purpose of the Administrative Procedures Act (APA) is to ensure that persons affected by a change in the operation of a regulation be notified and have an opportunity to address the proposed change.

While the General Assembly allowed the Board to make adjustments in fees charged, it did not provide the Board with authority to ignore the APA. Since the Board had a regulation governing the maximum charge for license renewal,

it should have altered the fee structure through the process provided in the APA.

By not following the APA, the Board deprived the licensees of an opportunity to comment on an issue affecting their profession. In addition, the Board charged \$10 more per licensee than its regulation allowed. This amounts to approximately \$64,000 over a 3-year period (FY 83-84 through FY 85-86) without benefit of regulatory authority.

Collection of fees in contravention to maximums set by regulation could present a problem in the future. If the Board is allowed to set fees by regulation, then ignore them, fee increases could be used to restrict entry to the field. It should be noted that Board fees have increased substantially over the past few years. Fees increased from \$30 biennially in FY 80-82 to \$45 in FY 82-83 (collected annually) to \$60 in FY 83-84. This represents a 300% increase in 4 years. Forty-four states charge lower fees for license renewal than South Carolina.

RECOMMENDATION

THE BOARD OF ACCOUNTANCY SHOULD COMPLY
WITH THE ADMINISTRATIVE PROCEDURES ACT
AND AMEND ITS LICENSING REGULATIONS WHEN
APPROPRIATE.

Application Date

Candidates for the CPA examination must submit an application to the Board of Accountancy 5 weeks prior to the date of the test, as required by §40-1-190 of the South Carolina Code of Laws (Supp. 1984). Board practice requires candidates for the accounting practitioner portion of the exam also to apply within 5 weeks in contravention to the 3-week requirement outlined in Board Regulation 1-18.

Deadlines for applications for the CPA examination should be set by specific calendar date so that candidates will know the exact day the application is due. The Board offers the examination once in the Spring and once in the Fall. Specific dates for the test are determined nationally, usually the first consecutive Wednesday - Thursday - Friday in May and November. Presuming that these days could fall on the 1st through 3rd of May and November, setting application dates for March 10 and September 10 for the May and November exams respectively would give the Board at least 6 weeks to process the applications.

If a candidate miscalculates the five-week period, the opportunity to take the exam will be delayed for six months. A loss of income could result since an applicant would not be licensed for that period. Board efficiency would be enhanced if specific dates were set, because staff time could be planned around these two dates. Fewer late applications could result.

RECOMMENDATIONS

THE GENERAL ASSEMBLY SHOULD CONSIDER
AMENDING §40-1-190 OF THE SOUTH CAROLINA
CODE OF LAWS TO ESTABLISH PARTICULAR
DATES FOR APPLICATIONS FOR EXAMINATION
TO BE RECEIVED.

IF THE GENERAL ASSEMBLY CHOOSES TO
CONTINUE LICENSING ACCOUNTING
PRACTITIONERS, THE BOARD OF ACCOUNTANCY
SHOULD AMEND REGULATION 1-18 TO INCLUDE
ACCOUNTING PRACTITIONERS.

APPENDIX

South Carolina Board of Accountancy

P. O. Box 11376 / Columbia, S. C. 29211

August 26, 1985

(803) 758-8355

R. LARRY KIGHT, CPA
Director

Mr. George L. Schroeder, Director
Legislative Audit Council
620 Bankers Trust Tower
Columbia, SC 29201

Re: Audit of the South Carolina Board of Accountancy
by the Legislative Audit Council

Dear Mr. Schroeder:

The South Carolina Board of Accountancy and the Staff of the Board appreciate the opportunity to respond to your study of the activities of the Board. Your staff has conducted a thorough and professional examination. We commend them for their performance.

Our response generally follows the sequence of your report.

1. Annual Renewal License Fees, page 244, footnote #1. The Board acknowledges that Regulation 1-12 restricts annual renewal license fees to \$50.00. This regulation and Sections 40-1-270 and 40-1-560 were overridden in 1983/84 and 1984/85 by a proviso to the Appropriations Act. The law was changed March 5, 1984, to amend Sections 40-1-270 and 40-1-560 to provide that the license fee would be an amount to be fixed by the Board. The Board plans to initiate changes in several regulations and sections of the Accountancy Law for presentation to the General Assembly in 1986. Most of the expected proposals to change are to correct sections of the law which have been effectively changed by later amendments and to conform the regulations to the current provisions of the Accountancy Law.
2. Accounting Practitioners, pages 245-248. The Board feels Sections 40-1-510 through 40-1-600 of the South Carolina code of laws governing Accounting Practitioners should not be repealed. There obviously has been and continues to be a need on the part of the public for this class. If this were not so, new Accounting Practitioners would not be licensed on a continuing basis. Furthermore, there are problems in South Carolina regarding unlicensed accountants practicing and we can see no reason to make that population larger by repealing these laws and eliminating this class of licensees.
3. Annual Licensure, pages 248-250. It is the opinion of the Board that the General Assembly should consider permitting the Board to continue collection annual fees. While there might be some savings by going to the biennial collection of fees, it is much more accurate and easier to budget by continuing on an annual collection basis.

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Page Two
Mr. George L. Schroeder
Legislative Audit Council
August 26, 1985

Several years ago, the Board did collect fees on a biennial basis and found that budgeting was much more accurate using the annual collection basis as was recommended by a Subcommittee of the House, Ways & Means Committee. The Board is not permitted to spend more than it collects in any year and biennial collections would not be flexible enough to make required changes in the amount of the fees to meet the needs of a rapidly growing and fast changing financial requirement. For instance, positive enforcement is the key to protecting the public and a decision to add an investigator would be more flexible if funding could be adjusted annually to meet the Board requirements.

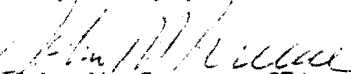
4. Policies and Procedures, pages 250-252. The Board does not disagree with the idea of developing a policies and procedures manual. It has not done so in the past because of lack of personnel and funding.

The Board has been working with the Internal Revenue Service to help them comply with the requirements of Section 40-1-190 and Regulation 1-7(d) as it relates to the application of generally accepted auditing standards to financial statements prepared in accordance with generally accepting accounting principles.

5. Examination Prerequisites. The Board agrees that a better definition of "good moral character" is needed. Out of thousands of applicants over the past eight years, the Board has only turned down three or four for a lack of good moral character.
6. License Renewal Requirements, pages 254-256. The Board agrees with the recommendation concerning conforming the license renewal requirements for CPAs, PAs and Accounting Practitioners. It expects to promulgate regulations concerning the retired, or inactive, status of licensees.
7. Advertising Restrictions, Testimonials & Endorsements, page 256. The Board has not taken a position on eliminating the restriction against testimonials and endorsements. There have been no recorded cases involving this restriction in enforcing the Code of Ethics. The American Institute of Certified Public Accountants has under consideration an amendment of its rules of professional conduct and the Board will review those for possible adoption of all or part of the AICPA Code of Professional Ethics, conforming to FTC recommendations.
8. Audit Review, pages 260-262. The Board agrees with the recommendation of the Legislative Audit Council.
9. Application Date, pages 265-266. The Board agrees that a specific date should be used for setting the deadline rather than "five weeks prior to the first day of the examination," and that Regulation 1-18 should be amended to conform.

The members of the Board of Accountancy welcome the opportunity to meet with you and your staff in the future.

Very truly yours,


John M. Greene, CPA
Chairman

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JMG/es